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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 158

AMOS SHRIVER, APPELLANT,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

FILED JUNE 12, 1931

(35,972)

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[fol. 1]

IN THE SUPREME COURT OF IOWA

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, Appellee,

vs.

AMOS SHRIVER, Appellant

Appeal from the District Court of Iowa County
Honorable H. D. Evans, Judge

Appellant's Abstract of Record

[fol. 2] On the 12th day of April, 1928, the Woodbine Savings Bank of Woodbine, Iowa, filed in the Office of the Clerk of the District Court of Iowa County, Iowa, its amended and substituted

PETITION AT LAW

against Amos Shriver, as follows:

[Caption omitted]

Comes now the plaintiff and for cause of action against defendant, states:

That it is a corporation duly organized and existing under the laws of the State of Iowa, being a savings bank and doing a general banking business in the Town of Woodbine, Harrison County, Iowa.

That said plaintiff was duly incorporated during the year 1891; that on May 10th, 1911, plaintiff was duly and legally reorganized and reincorporated with a capital stock of thirty thousand ($30,000.00) dollars; that, on the 24th day of January, 1917, said articles of incorporation of plaintiff were amended; that on the 19th day of February, 1920, plaintiff duly and legally amended its articles of incorporation and increased the capital stock of said corporation from thirty thousand dollars ($30,000.00) to fifty thousand ($50,000.00) dollars; that on the 5th day of April, 1921, plaintiff duly and legally amended its articles of incorporation.

That on the 18th day of May, 1891, defendant became the owner of ten shares of the capital stock of plaintiff corporation, said stock being of the par value of one hundred ($100.00) dollars a share, or a total par value of one thousand ($1000.00) dollars, and defendant continued to own [fol. 3] said ten shares of stock in plaintiff corporation until the 17th day of November, 1927.

Plaintiff states that on the 16th day of April, 1906, defendant became the owner of ten shares of the capital stock of plaintiff corporation, said stock being of the par value of one hundred ($100.00) dollars a share, or a total par value of one thousand ($1000.00) dollars, and that defendant continued to own said stock until the 17th day of November, 1927.

Plaintiff states that on the 18th day of May, 1891, Michael Shriver, father of defendant, became the owner of twenty shares of stock in plaintiff corporation; that on the 23rd day of May, 1891, the said Michael Shriver, father of defendant, became the owner of one share of stock in plaintiff corporation; that on the 1st day of July, 1895, the said Michael Shriver, father of defendant, became the owner of nine shares of stock of plaintiff corporation; that on the 25th day of January, 1900, the said Michael Shriver, father of defendant, became the owner of seven shares of the capital stock of plaintiff corporation; that all of said stock was of the par value of one hundred ($100.00) dollars, or a total par value of thirty seven hundred ($3700.00) dollars; that subsequent to the 25th day of January, 1900, the said Michael Shriver departed this life intestate and defendant thereupon became the owner of an undivided one-sixth interest of the stock owned by the said Michael Shriver; that on the 14th day of February, 1917, defendant became the owner of and received a certificate for 6 1/6 shares of the capital stock of plaintiff corporation; that thereafter, said [fol. 4] defendant sold a portion of said stock, surrendered said stock certificate and on the 8th day of June, 1925, became the owner of and received a certificate of stock for six shares of the capital stock of plaintiff corporation, said stock being of the par value of one hundred ($100.00) dollars a share, or a total par value of six hundred ($600.00) dollars; that defendant continued to own said stock until the 17th day of November, 1927.

That on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired by losses or otherwise, to the extent of 100% or fifty thousand ($50,000.00) dollars, and on the 15th day of February, 1927, the superintendent of banking of the State of Iowa, required an assessment upon the stockholders of plaintiff bank by ordering the directors thereof to levy an assessment equal to 100% of its par value or one hundred ($100.00) dollars a share, being a total of fifty thousand ($50,000.00) dollars on all stock and shares of stock of plaintiff bank; that the Board of Directors of plaintiff bank did, on the 10th day of March, 1927, make and levy a ratable assessment of 100% of the par value of stock and shares of stock of said bank upon the stockholders of said bank.

That thereafter, plaintiff gave the stockholders of plaintiff bank, including defendant, due and legal notice of the impairment of said capital stock and the making and levying of said assessment and of the entire sum to be raised by said assessment, and of the amount due from defendant, all as required by law.

[fol. 5] That more than ninety days expired after the date of mailing of said notice and defendant failed, neglected and refused to pay the assessment against the 26 shares of stock of said bank owned by him; that after the expiration of ninety days from the date of mailing said notice of assessment, defendant not having paid the same, the Board of Directors of plaintiff bank caused to be sold at public auction, the twenty-six shares of stock of said bank owned by defendant, said sale being held at the banking house of plaintiff at Woodbine, Iowa; that plaintiff gave due and legal notice of said sale, all as required by law.

That at said time, to-wit: on November 17th, 1927, the twenty-six shares of stock of defendant was sold at public auction to the highest bidder for the sum of one ($1.00) dollar per share, or a total of twenty-six ($26.00) dollars; that the amount received from said sale, to-wit: Twenty-six ($26.00) dollars, was applied upon the assessment levied against the stock of defendant, and that there remains a deficiency on said assessment of twenty-five hundred seventy four ($2574.00) dollars.

That by reason of all the matters hereinbefore stated, there is due and owing plaintiff from defendant, the sum of twenty-five hundred seventy-four ($2574.00) dollars, to-

gether with six per cent interest thereon from November 17th, 1927.

Wherefore, plaintiff demands judgment against defendant for the sum of twenty-five hundred seventy-four ($2574.00) dollars, together with six per cent interest there- [fol. 6] on from November 17th, 1927, and for the costs of this action.

Afterwards, and on the 12th day of April, 1928, the defendant filed in said case in the Office of the Clerk of the District Court of Iowa County, Iowa, his amended and substituted

ANSWER

as follows:

Comes now the defendant and for answer, states:

Defendant states he denies each and every allegation made by the plaintiff in its petition as amended, except such as are hereinafter expressly admitted.

Defendant admits that plaintiff is a corporation under the laws of the State of Iowa, and is a savings bank located in the Town of Woodbine, Iowa, and that this defendant was the owner of twenty-six (26) shares of the capital stock of the plaintiff bank, of the par value of $100.00 per share.

Defendant states that the plaintiff bank was organized and incorporated in the year 1891, and that he became the owner of ten shares of said twenty-six shares of the capital stock owned by him in said bank during the year 1891, which ten shares of stock were evidenced by stock certificate No. 6 of plaintiff bank under date of May 18, 1891.

Defendant states he became the owner of another ten shares of said twenty-six shares of the capital stock in plaintiff's bank, owned by him in the year 1906, the same being evidenced by stock certificate No. 10 of plaintiff's [fol. 7] bank, under date of April 16, 1906.

Defendant states that the other six shares of the stock owned by him in said bank were acquired by him upon the settlement of his deceased father's estate.

That the defendant's father died the owner of thirty-seven shares of the capital stock of plaintiff's bank, and upon the death of defendant's father, defendant be-

came the owner of an undivided one-sixth interest in the thirty-seven shares of the capital stock of said bank owned by his father in his lifetime.

Defendant states that the estate of his father was finally settled and the personal property of his said estate was divided about the year 1917, and the certificate or certificates evidencing the thirty-seven shares of capital stock of plaintiff bank was sent to said bank, who issued to this defendant, under date of February 14, 1917, a certificate evidencing the ownership by this defendant of 6 1/6 shares of the capital stock of plaintiff's bank.

That about the year 1925 defendant received notification from plaintiff bank that it was not proper for it to have a share of its capital stock split into fractional parts and such fractional parts owned by six persons, and defendant was requested by the plaintiff bank to send his certificate evidencing the ownership of the 6 1/6 shares of its capital stock to said bank, and plaintiff bank then informed defendant that if he would do so it would pay him for the one-sixth share of capital stock mentioned in said certificate and issue to him another certificate evidencing the ownership by him of the other six shares of capital stock of said [fol. 8] bank.

Defendant states that in compliance with the said request of plaintiff bank he sent his said stock certificate evidencing his ownership of six and one-sixth shares of capital stock of plaintiff bank to the said bank and he was paid for the one-sixth share of said stock mentioned in said certificate and a new certificate was sent him by said bank evidencing his ownership of the six shares of capital stock of said bank owned by him, such certificate being No. 112 of said bank and dated June 8, 1925.

Defendant states that at the time he became the owner of said twenty-six shares of the capital stock of the plaintiff bank, and at the time said twenty-six shares of capital stock of plaintiff bank was issued by plaintiff bank there was no personal liability imposed by law upon savings banks organized under the laws of Iowa, such as the claimed liability sought to be enforced by plaintiff against the defendant in this action.

Defendant states said twenty-six shares of the capital stock of plaintiff bank were issued and in existence, and defendant was the owner and holder thereof, prior to and

at the time Chapter 181 of the Acts of the Forty-first Regular General Assembly of the State of Iowa was passed by said Assembly and became effective as the law of the State of Iowa.

Defendant states that Chapter 181 of the Acts of the Forty-first General Assembly of the State of Iowa (Section 9248-a Code of Iowa, 1927) as and if applied to the twenty-six shares of capital stock owned by this defendant in plain- [fol. 9] tiff's bank, and to this defendant as the owner of such stock, is violative and in violation of Section 10 of Article One of the Constitution of the United States, which forbids any state to pass any law impairing the obligations of contracts, and is violative, and in violation of Section 21 of Act 1 of the Constitution of the State of Iowa, which provides that no law impairing obligation of contracts shall ever be passed.

Defendant states that as and if applied to the said twenty-six shares of the capital stock owned by defendant in plaintiff bank, and to the defendant as owner thereof, the said Chapter 181 Acts of the Forty-first General Assembly of Iowa (Sec. 9248-a Code of Iowa, 1927) is violative and in violation of the Fourteenth Amendment to the Constitution of the United States, and of Section Nine of Article One of the Constitution of the State of Iowa, as depriving this defendant of vested rights and depriving him of his property without due process of law.

Defendant states that Chapter 181 Acts of 41st General Assembly of Iowa (Section 9248-a1 Code of Iowa, 1927) as and if applied to the said shares of the capital stock owned by him, and to this defendant as the owner of such stock, is unconstitutional for the reason that such act impairs the obligation of the contract existing between this defendant and the plaintiff bank by virue of defendant being a stockholder in said bank, as it adds a new and different obligation on this defendant from any which he ever contracted to assume, and is therefor- in violation of Section 10 Article One of the Constitution of the United [fol. 10] States, and also violative and in violation of Section 21, Article 1 of the Constitution of the State of Iowa.

Defendant further states said Chapter 181, Acts of the 41st General Assembly of Iowa (Section 9248-a1, Code of 1927) is invalid and unconstitutional for the reason that the Legislature, or General Assembly of the State of Iowa,

was without authority to pass such a law, and for the further reason that said law was not passed by a vote of two-thirds of each branch of the General Assembly, and therefore, if the General Assembly had any authority to pass such an act, it was not passed by the vote required in each branch of the General Assembly, as provided by Section 12, Article 8 of the Constitution of Iowa.

That Sections 9247, 9248, 9248-a1 of the Code of 1927 are inconsistent with Sections 9235, 9238, 9246 of the Code of 1927, and therefor- sections *Sections* 9247, 9248 and 9248-a1 of the Code of 1927 are void, and said last three sections of the Code of 1927 are coercive if applied as to the stock owned by the defendant in the plaintiff corporation, and denies the defendant of his vested rights in his property and contract.

Afterwards, and on the 12th day of April, 1928, the plaintiff filed in said case in the office of the Clerk of the District Court of Iowa County, Iowa, its

REPLY

as follows:

Comes now the plaintiff and by way of reply to defendant's amended and substituted answer, states that plaintiff [fol. 11] denies each and every affirmative allegation and plea therein contained in any way inconsistent with the claims of plaintiff's petition.

On the 12th day of April, 1928, the trial of said cause was commenced at Marengo, Iowa, before Hon. H. D. Evans, Judge.

It is agreed between the plaintiff and the defendant that a jury in this cause is waived, and that this cause be tried to the court.

Plaintiff requests that the court make a finding of facts and conclusion of law.

STATEMENT OF EVIDENCE

Plaintiff's Evidence

The plaintiff and defendant offer in evidence Exhibit "A," being a stipulation between the plaintiff and the de-

fendant, together with all exhibits attached thereto, or made a part thereof.

EXHIBIT A

This Stipulation, made this 11th day of April, 1928, by and between Woodbine Savings Bank of Woodbine, Iowa, party of the first part, and Edward F. Knepper, Amos Shriver, Lucy Bladen and Carl H. Knepper, parties of the second part;

Witnesseth:

That Whereas, party of the first part has instituted action against each of the parties of the second part in the District Court of Iowa County, Iowa, said actions being law actions and being Cause Numbers 12519, 12520, 12521 and 12522, reference being hereby made to said actions as the same appear of record or on file in the office of the Clerk of [fol. 12] the District Court of Iowa County, Iowa;

And Whereas, the parties hereto desire to stipulate with reference to certain facts involved in said causes;

It is, Therefore, Agreed and Stipulated by and between the parties hereto, as follows, to-wit:

1. The parties hereto hereby stipulate and agree to waive a jury in each of the causes of action hereinbefore described and to try the same to the court.

2. It is further stipulated and agreed that this stipulation shall be offered in evidence in support of the issues as made by the pleadings herein, and that the facts herein stipulated shall be received and considered by the court as evidence in support of said issues.

3. It is stipulated and agreed that plaintiff was duly and legally incorporated as a savings bank under the laws of the State of Iowa, on the 6th day of May, 1891, and at said time adopted articles of incorporation, the original of said articles being attached hereto, marked Exhibit "1" and made a part hereof by reference.

4. It is stipulated and agreed that on the 11th day of May, 1911, the franchise of plaintiff under its original articles having expired, plaintiff duly and legally reincorporated and reorganized as a savings bank under the laws of the State of Iowa, and at said time adopted, amended and substituted articles of incorporation, the original thereof

being attached hereto, marked Exhibit "2," and made a part hereof by reference.

5. It is stipulated and agreed that on the 27th day of [fol. 13] February, 1920, plaintiff duly and legally adopted an amendment to its articles of incorporation increasing its capital stock from Thirty Thousand ($30,000.00) Dollars to Fifty Thousand ($50,000.00) Dollars, the original of said amendment being attached hereto, marked Exhibit "3" and made a part hereof.

5½. It is stipulated and agreed that on the 26th day of January, 1917, plaintiff duly and legally adopted an amendment to its articles of incorporation and provided that the affairs of plaintiff corporation should be conducted and managed by a board of five directors, the original of said amendment being attached hereto, marked Exhibit "3½" and made a part hereof by reference the same as though set out in full herein.

6. It is stipulated and agreed that on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired to the extent of 100% or Fifty Thousand ($50,000.00) Dollars, and that on said date the superintendent of banking of the State of Iowa, so determined; that on February 15, 1927, said superintendent of banking addressed an order to plaintiff bank and to the several members of plaintiff's board of directors, requiring an assessment against the stock in plaintiff bank and fixing the amount thereof at 100% or Fifty Thousand ($50,000.00) Dollars; that said order was in writing and that Exhibit "4" attached hereto is an original of said order so given by said superintendent of banking to plaintiff and to each of its directors, and it is stipulated and agreed that an order identical with Exhibit "4" was addressed to and received by plaintiff bank and by each of the five directors thereof, [fol. 14] on or about the 16th day of February, 1927.

7. That on March 10, 1927, the board of directors of plaintiff bank at a meeting duly and legally called, passed and adopted a resolution, a true copy of said resolution and of the minutes of said meeting being attached hereto, marked Exhibit "5" and made a part hereof by reference.

8. That thereafter, plaintiff gave the stockholders of said bank, including defendants and each of them, certain no-

tices in writing signed by the president and attested by the cashier of plaintiff bank, under plaintiff's seal, by depositing said notices in the Post office at Woodbine, Iowa, addressed to defendants and each of them at their last known residences; that said notices were duly received by said defendants and each of them in the regular course of the United States mail.

(a) That Exhibits "6" and "7" attached hereto are true copies of said notices so addressed and mailed to and received by defendant, Amos Shriver.

(b) That Exhibits "8" and "9" are true copies of said notice so addressed and mailed to and received by defendant, Edward F. Knepper.

(c) That Exhibits "10" and "11" are true copies of said notices so addressed and mailed to and received by defendant, Lucy Bladen.

(d) That Exhibits "12" and "13" are true copies of said notices so addressed and mailed to and received by defendant, Carl H. Knepper.

By reference all of said Exhibits are made a part hereof, particularly including the affidavit on the reverse side of said Exhibits.

[fol. 15] 9. It is stipulated and agreed that said defendants and each of them failed, neglected and refused and still fail, neglect and refuse to pay the claimed assessment against them and each of them and against the stock belonging to each of them.

10. That on the 4th day of October, 1927, the board of directors of plaintiff bank at a regular meeting duly and legally called and held, adopted a resolution to cause the stock belonging to defendant and to each of them to be sold at public auction and fixing the time and place thereof, a true copy of said resolution and of the minutes of said directors' meeting and certification thereof, being attached hereto and made a part hereof as Exhibit "14."

11. That on the 14th day of October, 1927, plaintiff gave notice to all stockholders failing to pay the claimed assessment above referred to, including defendants and each of them, of the amount due thereunder from the stock-

holders and the time and place of sale; that said notice to said defendants was served personally on said defendants, and each of them, as follows:

(a) Attached hereto and made a part hereof by reference is Exhibit "15," being a true copy of the notice to defendant, Amos Shriver, Carl H. Knepper, and Lucy Bladen, together with the returns of service thereof.

(b) Attached hereto and made a part hereof is Exhibit "16" being a true copy of the notice served on defendant, Edward F. Knepper, together with the return of service thereof.

12. It is stipulated and agreed that on the 7th day of November, 1927, plaintiff caused to be published and there [fol. 16] was published in Missouri Valley Times, a Newspaper of the County in which plaintiff bank is located, a notice, a true copy of which is attached hereto, marked Exhibit "17" and made a part hereof by reference; that said notice was published in one issue of said newspaper on the 7th day of November, 1927.

13. That on the 17th day of November, 1927, at a public auction sale held at the banking house of plaintiff in Woodbine, Iowa, the stock owned by parties of the second part was sold to the highest and best bidder in the amounts and for the sums as follows, to-wit:

(a) The twenty-six shares of stock belonging to defendant, Amos Shriver, was then and there sold for the sum of One (1.00) Dollar per share or a total sum of Twenty-six ($26.00) Dollars; that the amount realized from said sale, to-wit: Twenty-six ($26.00) Dollars, was duly credited on said claimed assessment, leaving a deficiency on said claimed assessment in the amount of Twenty-five Hundred Seventy-four ($2574.00) Dollars.

(b) The three shares of stock belonging to defendant, Carl H. Knepper, were then and there sold for the sum of One (1.00) Dollar per share or a total sum of Three ($3.00) Dollars, and the amount thereby realized, to-wit: Three (3.00) Dollars was duly credited on said claimed assessment, leaving a deficiency on said claimed assessment in the amount of Two Hundred Ninety-seven ($297.00) Dollars.

(c) The four shares of stock owned by defendant, Edward F. Knepper, were then and there sold for the sum [fol. 17] of One (1.00) Dollar per share, or a total of Four ($4.00) Dollars, and the amount so realized was duly credited upon the said claimed assessment, leaving a definciency on said claimed assessment in the amount of Three Hundred Ninety-six ($396.00) Dollars.

(d) The sixty shares of stock belonging to defendant, Lucy Bladen, were then and there sold for the sum of One (1.00) Dollar per share or a total of Six (6.00) Dollars, and that said amount thereby realized was duly credited upon the claimed assessment, leaving a deficiency on said claimed assessment in the amount of Five Hundred Ninety-four (594.00) Dollars.

14. It is stipulated and agreed that all the stock owned and held by stockholders in plaintiff bank who failed, neglected and refused to pay the claimed assessment hereinbefore referred to, was sold on the 17th day of November, 1927, at the banking house of plaintiff in Woodbine, Iowa, and that all of said stock was sold for One (1.00) Dollar per share.

15. That defendants never attended any stockholders' meetings of said bank and were given no notice of any stockholders' meeting in connection with the claimed assessment hereinbefore referred to, and in connection with the alleged sale of defendants' stock.

16. That subsequent to the year 1911 and prior to March, 1925, defendants and each of them were paid and accepted dividends on the stock in plaintiff bank held by them.

17. It is stipulated and agreed that at the time of the convening of the Forty-first General Assembly of Iowa, [fol. 18] there were 108 duly elected, qualified and acting members of the House of Representatives and 50 duly elected, qualified and acting members of the Senate of Iowa; that the final vote cast in the House of Representatives in connection with Senate File No. 38 as Amended, was as follows: 64 affirmatives, 5 negatives and 39 absent, or not voting; that the final vote cast in the Senate of Iowa in connection with said Act known as Senate File No. 38 as amended, was as follows: 28 affirmatives, 9 nega-

tives and 13 absent, or not voting, as shown by the Senate and House Journal published by the State of Iowa, copies of which may be received in evidence in lieu of the original journals of said Senate and House of Representatives, with the same force and effect as though the originals of said journals were offered and received in evidence.

18. It is stipulated and agreed that defendant, Amos Shriver, did, on the 18th day of May, 1891, become the owner of ten shares of the capital stock of plaintiff corporation, said stock being of the par value of One Hundred Dollars ($100.00), a share or a total par value of One Thousand ($1000) Dollars; and that said defendant continued to own said ten shares of stock in plaintiff corporation until November 17th, 1927; that on the 16th day of April, 1906, defendant, Amos Shriver, became the owner of ten shares of the capital stock of plaintiff corporation, and stock being of the par value of One Hundred ($100.00) Dollars a share or a total par value of One Thousand ($1000.00) Dollars, and that said defendant continued to own said stock until November 17, 1927; that on Febru-[fol. 19] ary 14th, 1917, defendant, Amos Shriver, became the owner of six and one-sixth shares of the capital stock of plaintiff corporation and thereafter he was informed by plaintiff that the banking department of the State of Iowa was criticizing plaintiff in that a part of its bank stock was owned in fractional shares; that thereafter, he sold one-sixth share of said stock, surrendered the certificate to plaintiff representing said six and one-sixth shares of stock, and on the 8th day of June, 1925, in lieu thereof, received a certificate from plaintiff bank for said six shares of stock of said bank of the par value of One Hundred ($100.00) Dollars a share or a total par value of Six Hundred ($600.00) Dollars, that said defendant continued to own said stock until November 17, 1927.

19. It is stipulated and agreed that on the 26th day of October, 1921, Carl H. Knepper became the owner of three shares of the capital stock of plaintiff corporation, said stock being of the par value of One Hundred ($100.00) Dollars a share or a total par value of Three Hundred ($300.00) Dollars, and that said defendant continued to own said stock until November 17, 1927.

20. It is stipulated and agreed that on February 14, 1917, defendant Lucy Bladen, became the owner of six and one-sixth shares of the capital stock of plaintiff corporation and thereafter she was informed by plaintiff that the banking department of the State of Iowa was criticizing plaintiff in that a part of its bank stock was owned in fractional shares; that thereafter she sold one-sixth share of said stock, surrendered the certificate to plaintiff representing said six and one-sixth shares of stock, and on the 8th day of [fol. 20] June, 1925, in lieu thereof, received a certificate from plaintiff for said six shares of stock of said bank of the par value of One Hundred ($100.00) Dollars a share, or a total par value of Six Hundred ($600.00) Dollars, and that said defendant continued to own said stock until November 17, 1927.

21. It is stipulated and agreed that defendant, Edward F. Knepper did, on the 26th day of October, 1921, become the owner of four shares of the capital stock of plaintiff bank represented by a certificate thereof issued to Elizabeth J. Knepper as his Guardian; that thereafter, and on March 1927, said defendant having attained his majority, said certificate of stock held by his Guardian was surrendered to plaintiff's bank and on said date of March 7th, 1927, a new certificate was issued in lieu thereof to defendant, Edward F. Knepper for four shares of the capital stock of plaintiff corporation, said stock being of the par value of One Hundred ($100.00) Dollars a share, or a total par value of Four Hundred ($400.00) Dollars, and said defendant continued to own said stock until November 17th, 1927.

22. It is stipulated and agreed that this stipulation may be offered in evidence in each of the causes of action hereinbefore described for the purposes hereinbefore stated.

In witness whereof the parties have hereunto set their hands the day and date first above written.

Woodbine Savings Bank of Woodbine, Iowa, by [fol. 21] Bolter & Murray, Hatter & Harned, Its Attorneys, Party of the First Part. Edward F. Knepper, Amos Shriver, Lucy Bladen, Carl H. Knepper, by Wallace & Claypool, Their Attorneys, Parties of the Second Part.

EXHIBIT "1" OF EXHIBIT "A"

is the articles of incorporation of the Woodbine Savings Bank of Woodbine, Iowa, and is, as follows:

"We, G. H. Kibler, H. C. Harshbarger, E. H. Bucknam, I. A. DeCou, H. A. Kinney, and Lewis Haas, Citizens of the State of Iowa, and such other persons as may hereafter associate themselves with us, hereby form a corporation under the provisions of Chapter Sixty (60) of the Public Law of the Fifteenth General Assembly, and acts amending and modifying the same, and to that end do adopt the following Articles of Incorporation.

Article I

The name of this corporation shall be the Woodbine Savings Bank.

Article II

The object of this corporation is to transact the usual business of a savings bank under the provisions of the acts referred to in the preamble; and it hereby takes to [fol. 22] itself any and all of the powers, and accepts all the duties and obligations, imposed by the laws of the State of Iowa for the government of savings banks.

Article III

The amount of its Capital Stock shall be Thirty Thousand ($30,000) Dollars, divided into Three Hundred (300) shares of One hundred ($100) Dollars each.

Article IV.

This corporation shall continue for the term of Twenty (20) years.

Article V

The affairs of this corporation shall be managed by a Board of Seven Directors, and the following persons shall be the Directors for the first year and also until the regular Annual Meeting to be held in June, 1892, as provided in Section 72, or until their successors shall be duly elected

and shall have qualified; G. H. Kibler, H. C. Harshbarger, E. H. Bucknam, I. A. DeCou, H. A. Kinney, E. M. Donaldson, Lewis Haas.

Article VI

The annual meeting for the election of Directors shall be held on the Second Wednesday in June in each year, the first Annual Meeting to be held on the Second Wednesday, in June, 1892. At all meetings of stockholders, each stockholder shall be entitled to one vote for every share held by him which vote he may cast in person or by proxy.

Article VII

The principal place of business shall be located in the [fol. 23] Town of Woodbine, County of Harrison and State of Iowa.

Article VIII

These Articles may be amended in whole or in part at any regular or special meeting of the stockholders, but to effect the same there must be cast in the affirmative a vote of two-thirds in amount of all the stock of all the bank; provided, that a notice of such proposed amendment shall be published at least thirty (30) days in every issue of some newspaper published in the town where the principal place of business of the bank is located, which notice shall specify the object of the meeting, and time and place of holding the same; and a certificate of the proceedings shall be executed, signed and acknowledged by the Chairman and Secretary of the meeting, and a majority of the Directors and filed and recorded the same as the original Articles of Incorporation; and a notice, stating the substance of the amendment or amendments adopted shall be published as required at the organization of the company.

G. H. Kibler, E. H. Bucknam, I. A. DeCou, H. A. Kinney, Lewis Haas.

(Duly Acknowledged.)

EXHIBIT "2" OF EXHIBIT "A"

is as follows:

Amended and Substituted Articles of Incorporation of the [fol. 24] Woodbine Savings Bank, of Woodbine, Iowa

Know all men by these presents:

That at a meeting of the stockholders of the Woodbine Savings Bank, a corporation duly organized under the laws of the State of Iowa, held at the offices of said Bank in Woodbine, Iowa, after due and legal notice had been given to the stockholders thereof in conformity with the provisions of Chapter 65—31st General Assembly of the State of Iowa, being an act to provide for the renewal or extension of the period of state and savings banks, at which the requisite amount of the stock of said bank was represented, the following amended and substituted Articles of Incorporation were adopted by the unanimous vote of the stock represented at said meeting as shown below:

Total number of shares outstanding, 300

Total number of shares represented at said meeting, 250

Total number of shares of stock voted in favor of the following Amended and Substituted Articles, 250.

Article 1

Name and Place of Business

The name of the corporation shall be "Woodbine Savings Bank," and its place of business shall be the City of Woodbine, County of Harrison, and State of Iowa.

Article II

Business

The general nature of the business to be transacted by this corporation shall be that of a savings bank, conducted [fol. 25] under the provisions of Chapters 10 and 12 of Title IX of the Code of Iowa and acts of the legislature amendatory thereto; and this corporation hereby assumes and takes to itself all and singular the powers conferred upon savings banks by the laws of Iowa, and accept all the duties and obligations imposed thereby.

Article III

Capital Stock

The capital stock of this corporation shall be thirty thousand dollars (30,000) Dollars and shall be divided into shares of one hundred dollars ($100) each, and shall be fully paid before the corporation begins the transaction of its business.

Article IV

Duration

The existence of this corporation is hereby renewed, and shall continue for a period of twenty years from the date of the expiration of the original period May 18, 1911. Its corporate existence may be terminated at any time by a three-fourths vote of the stockholders at any regular or special meeting called for that purpose, in conformity with the articles of incorporation and in accordance with the provisions of the statute.

Article V

Board of Directors and Officers

Section 1. The affairs of this corporation shall be conducted and managed by a Board of Six (6) Directors, who shall be elected from the shareholders at the annual meeting of stockholders of the corporation, and shall hold office for the term of one year, and until their successors are elected and qualified and have accepted office.

[fol. 26] Section 2. Any vacancy on the board of directors shall be filled by the remaining members of the board, and the persons so appointed shall hold office until the next annual meeting of the stockholders.

Section 3. The Board of Directors shall elect a president, and vice-president from its members, and shall also elect a cashier, who may or may not be a stockholder of a member of the board of directors, and who shall also act as secretary of the corporation. It may also elect and employ such other officers and clerks as may be necessary to the transaction of its business, and shall fix the compensation of all officers and employees.

Article VI

Annual and Special Meetings of the Stockholders

Section 1. The annual meeting of the stockholders shall be held at the office of the corporation on the Second Tuesday in January of each year, beginning with the year 1912, at which time the stockholders shall elect a board of directors and transact such other business as may lawfully come before them.

Section 2. Special meetings of the stockholders may be called by the president, vice-president, or by a majority of the members of the board of directors, or by the holder or holders of a majority of the stock of the corporation. Ten (10) days notice of the time and place of such meeting shall be given by the cashier, or the person or persons calling such special meeting, by mailing a notice in writing to each stockholder, directed to his address as shown upon the books [fol. 27] of the corporation, which notice shall state the object of the meeting, and no business other than that named in the notice shall be transacted at such special meeting, unless all the stock of the corporation shall be represented, and no objection shall be made by any stockholder to the transaction of business other than that named in the notice.

Section 3. The voting at all stockholders meetings shall be by ballot, and each share of stock represented by the holder thereof, or by his proxy duly authorized in writing, shall be entitled to one vote.

Article VII

Provisional Directors

Until the first annual meeting of the stockholders, the following named persons shall be the directors of the corporation:

H. A. Kinney; P. O. Address, Woodbine, Iowa.
Lewis Haas; P. O. Address, Woodbine, Iowa.
Geo. H. Kibler; P. O. Address, Long Beach, Cal.
W. E. O'Connor; P. O. Address, Woodbine, Iowa.
C. C. Haas; P. O. Address, Woodbine, Iowa.

Article VIII

The annual meeting of the board of directors shall be held on the Second Tuesday of January each year, immediately following the adjournment of the annual meeting of the stockholders, at which time it shall elect a president, vice-president and a cashier, and may elect or employ such other officers, clerks or employes as shall be deemed necessary for the transaction of the business of the corporation. [fol. 28] Until the first annual meeting of the Board of Directors, the following named persons shall be the officers of the corporation:

President, Lewis Haas; P. O. Address, Woodbine, Iowa.

Vice President, H. A. Kinney; P. O. Address, Woodbine, Iowa.

Cashier, C. C. Haas; P. O. Address, Woodbine, Iowa.

Article IX

Execution and Acknowledgment of Written Instruments

Section 1. All deeds, mortgages and instruments in writing affecting real estate which shall be made by the corporation shall be executed and acknowledged in the name of the corporation by the president or vice-president, and attested by the cashier, with the corporate seal thereto affixed.

Section 2. Releases of mortgages and other liens held by the corporation, and satisfaction thereof, may be made, executed and acknowledged by the president, vice-president or cashier of the bank.

Section 3. All other written instruments which may be made by the corporation shall be executed by such other officers or agents as the by-laws may designate.

Article X

Certificate of Stock

Section 1. The shares of stock of the corporation shall be issued only upon full payment of the sums represented by them, and shall be transferable only by assignment upon [fol. 29] the books of the corporation.

Section 2. The certificates of stock issued to the shareholders shall be signed by the president or vice-president, and attested by the cashier, and have the Corporate seal affixed thereto.

Article XI

Indebtedness

This corporation shall not contract or incur any debt or liability, except for deposits, and the necessary expenses of managing and transacting its business, and obligations incurred for the purpose of obtaining money with which to pay deposits.

Article XII

Exemption of Private Property

The private property of the stockholders shall be exempt from corporate liability, except to the extent and in the manner provided by the constitution and laws of the state.

Article XIII

By-Laws

The board of directors may, by a two-thirds vote, make and accept by-laws which are not in conflict with the laws of the State or these articles of incorporation, for the management of the property of the corporation, the transaction of its business and the regulation of its affair-, and may by a like vote alter or change such by-laws.

Article XIV

Amendment of Articles of Incorporation

These articles of incorporation may be amended at any regular meeting of the stockholders, or at a special meeting called for that purpose, by a two-thirds vote of the capital stock of the corporation.

[fol. 30] Article XV

This corporation may be dissolved prior to the time fixed in its articles of incorporation, by an affirmative vote of

its stockholders holding three-fourths of its capital stock at a meeting of the stockholders called for that purpose in the manner required by law, and these articles of incorporation; and in case of such dissolution its affairs shall be wound up in the manner provided by statute.

We, Lewis Haas and C. C. Haas, President and Secretary of said Corporation, do hereby certify the above to be a true and correct statement of the proceedings of the stockholders at the above named meeting, and that we have executed this instrument, and do hereby sign and acknowledge the same, for and on behalf of the said corporation, this 10th day of May, 1911.

Lewis Haas, President. C. C. Haas, Secretary.

(Duly acknowledged.)

EXHIBIT "3" OF EXHIBIT "A"

is an amendment to the Articles of Incorporation of the Woodbine Savings Bank under date of February 19, 1920, as follows:

Article Three of Articles of Incorporation of the Woodbine Savings Bank, is amended so as to read, the Capital Stock of this corporatin shall be increased from the present amount which is Thirty Thousand Dollars ($30,000.00) to Fifty Thousand Dollars ($50,000.00).

[fol. 31] EXHIBIT "3½" OF EXHIBIT "A"

is an amendment of the Articles of Incorporation of the Woodbine Savings Bank, under date of January 25, 1917, as follows:

Article V

Board of Directors and Officers

Section 1. The affairs of this corporation shall be conducted and managed by a board of Five (5) Directors, who shall be elected from the shareholders at the annual meeting of stockholders of the corporation, and shall hold of-

fice for the term of one year and until their successors are elected and qualified and have accepted office.

EXHIBIT "4" OF EXHIBIT "A"

is, as follows:

State of Iowa, Department of Banking, Des Moines

February 15, 1927.

Mr. Lewis Haas, Director, Woodbine Savings Bank, Woodbine, Iowa.

DEAR SIR: The report of the Examiner shows that the condition of the Woodbine Savings Bank necessitates an assessment on the capital stock of one hundred per cent (100%) being One Hundred Dollars ($100.00) per share;

Now, therefore, in compliance with the provisions of Section 9246, Code of Iowa, I, L. A. Andrews, Superintendent of Banking for the State of Iowa, do hereby order and direct that an assessment be made upon the several stock-[fol. 32] holders of said bank; namely, Woodbine Savings Bank located at Woodbine, Iowa, amounting to one hundred per cent (100%), being One Hundred Dollars ($100.00) per share of the stock held by each stockholder, and I further order and direct that said assessment be ordered by the Board of Directors and paid as provided by sections 9246, 9247 and 9248 of the Code.

In testimony whereof, I have hereunto set my hand and seal of office this fifteenth day of February, 1927.

L. A. Andrews, Superintendent of Banking. (Seal.)

EXHIBIT "5" OF EXHIBIT "A"

is as follows:

Woodbine, Iowa, March 10, 1927.

Board of Directors met on above date with the following officers present: Lewis Haas, W. E. O'Connor, Fred Powley and Geo. B. Hewitt, and passed the following resolution:

Resolution

Whereas, on February 15, 1927, the Superintendent of Banking of the State of Iowa sent his order to each of the Board of Directors of this bank, ordering and directing that an assessment be made upon the stock and stockholders of the Woodbine Savings Bank, Woodbine, Iowa, of 100%. Now, therefor-, be it resolved that an assessment of 100% be and the same is hereby levied on and against the stock and stockholders of the Woodbine Savings Bank, Woodbine, Iowa, and that notice thereof be given to each of the stockholders of said bank as provided by law.

On motion by Powley, second by Hewitt, the foregoing [fol. 33] resolution was adopted; by Roll Call, O'Connor, aye; Powley, aye; Hewitt, aye; Haas, aye.

Lewis Haas, Chairman. J. T. Hunt, Secretary.

EXHIBIT "6" OF EXHIBIT "A"

is, as follows:

March 15, 1927.

Mr. Amos Shriver, Marengo, Iowa.

DEAR SIR: As one of the stockholders of the Woodbine Savings Bank of Woodbine, Iowa, owning twenty-six shares of the capital stock of said bank of the par value of $100.00 per share, $50,000.00 as shown by an examination under the direction of the State Superintendent of Banking is impaired to the extent of 25%, and you are hereby further notified that the State Superintendent of Banking on February 15th, 1927, ordered the Directors of said Woodbine Savings Bank to make an assessment on all stock equal to 100% of its par value, or $100.00 per share, and you are further notified that in compliance with said order from the State Superintendent of Banking, said Board of Directors of the Woodbine Savings Bank, did on March 15, 1927, make an assessment of $50,000.00 and as the holder of twenty-six shares of stock, the amount due from you is $2600.00 for which amount you will please make settlement in conformity with the Statutes of Iowa, Code section 9246, 9247 and 9248.

In testimony whereof I have hereunto set my hand and affixed the seal of the corporation this 15th day of March, 1927.

[fol. 34] Lewis Haas, President.

Attest: Jason T. Hunt, Cashier.

Attached to said notice is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholder, all as shown by said notice, on March 14, 1927.

J. T. Hunt.

Subscribed and sworn to before me by the said J. T. Hunt this 16th day of March, 1927. Vera Farnsworth, Notary Public. (Seal.)

EXHIBIT "7" OF EXHIBIT "A"

is, as follows:

July 6, 1927.

Mr. Amos Shriver, Marengo, Iowa.

DEAR SIR: The examination of the bank under the direction of the Superintendent of Banking set out paper to be eliminated amounting approximately to 100% of the capital instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the examiner's report and has been levied by the directors by proper resolution.

I trust you will take notice of the foregoing letter and govern yourself accordingly, I remain,

[fol. 35] Your truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached to said notice is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last *notice* of the within named stockholder, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, Notary Public.

EXHIBIT "8" OF EXHIBIT "A"

is as follows:

July 6, 1927.

Mr. Edward F. Knepper, Marengo, Iowa.

DEAR SIR: The examination of the bank under the direction of the Superintendent of Banking set out paper to be eliminated amounting approximately to 100% of the capital, instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the Examiner's report and has been levied by the directors by proper resolution. I trust you will take notice of the fore-[fol. 36] going letter and govern yourself accordingly. I remain,

Yours truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached to said notice is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa addressed to the last known residence of the within stockholder, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, Notary Public. (Seal.)

EXHIBIT "9" OF EXHIBIT "A"

is as follows:

Mr. Edward F. Knepper, Marengo, Iowa.

DEAR SIR: The examination of the bank under the direction of the Superintendent of banking set out paper to be eliminated amounting approximately to 100% of the capital instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the examiner's report, and has been levied by the directors by proper resolution.

[fol. 37] I trust you will take notice of the foregoing letter and govern yourself accordingly. I remain,

Yours truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached is the following:

STATE OF IOWA,
County of Iowa, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholder, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, Notary Public. (Seal.)

EXHIBIT "10" OF EXHIBIT "A"

is as follows:

March 15, 1927.

Mrs. Lucy Bladen, Marengo, Iowa.

DEAR MADAM; As one of the stockholders of the Woodbine Savings Bank of Woodbine, Iowa, owning six shares of the capital stock of said bank of the par value of $100 per

share, $50,000.00, as shown by an examination under the direction of the State Superintendent of Banking is im-
[fol. 38] paired to the extent of 25%, and you are hereby further notified that the State Superintendent of Banking on February 15, 1927, ordered the directors of said Woodbine Savings Bank to make an assessment on all the stock equal to 100% of its par value, or $100 per share, and you are further notified that in compliance with said order from the State Superintendent of Banking, said board of directors of the Woodbine Savings Bank did on March 15, 1927, make an assessment of $50,000.00 and as the holder of six shares of stock the amount due from you is $600 for which amount you will please make a settlement in conformity with the statutes of Iowa, Code sections 9246, 9247 and 9248.

In testimony where- I have hereto set my hand and affixed the seal of the corporation this 15th day of March, 1927.

Lewis Haas, President.

Attest: Jason T. Hunt, Cashier. (Seal.)

Attached is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholder, all as shown by said notice on March 14, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 16th day of March, 1927. Vera Farnsworth, Notary Public. (Seal.)

[fol. 39] EXHIBIT "11" OF EXHIBIT "A"

is as follows:

July 6, 1927.

Mrs. Lucy Bladen, Marengo, Iowa.

DEAR MADAM: The examination of the bank under the direction of superintendent of banking set out paper to be

eliminated amounting approximately to 100% of the capital instead of 25% of the capital, as erroneously stated in my notice of March 15, 1927. The order for 100% assessment by the banking department was based upon the examiner's report and has been levied by the directors by proper resolution.

I trust you will take notice of the foregoing letter and govern yourself accordingly. I remain,

Yours truly, Lewis Haas, President.

Attest: J. T. Hunt, Cashier. (Seal.)

Attached, is the following:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being duly sworn, depose and say I deposited the within notice in the Post Office at Woodbine, Iowa, addressed to the last known residence of the within named stockholders, all as shown by said notice on July 6, 1927.

J. T. Hunt.

Subscribed and sworn to before me by said J. T. Hunt this 7th day of July, 1927. Vera Farnsworth, No. [fol. 40] tary Public. (Seal.)

EXHIBIT "12" OF EXHIBIT "A"

is a letter dated March 15, 1927, addressed to Carl H. Knepper, Marengo, Iowa, and is identically the same as Exhibit "6" of Exhibit "A," and has the same affidavit attached and is signed identically the same.

EXHIBIT "13" OF EXHIBIT "A"

is a letter dated March 15, 1927, addressed to Edward F. Knepper, Marengo, Iowa, and is identically the same as Exhibit "6" of Exhibit "A" and has the same affidavit attached, and is signed identically the same.

EXHIBIT "14" OF EXHIBIT "A"

is as follows:

Woodbine, Iowa, Oct. 14, 1927.

Regular meeting of the Board of Directors was held in the Directors room on date above written with the following officers present: Lewis Haas, George B. Hewitt, and Fred Powley. Minutes of the last meeting were read and approved. Resolutions to borrow and rediscount notes at the Council Bluffs Savings Bank of Council Bluffs, Ia. and the Livestock National Bank of Omaha, Nebraska, were read and ordered spread on the minute books. The date of the sale of stock of the stockholders, who had not paid their assessments on this date, is fixed at 9 A. M. November 17, 1927, at the office of the Woodbine Savings Bank, Woodbine, Iowa, by the following:

[fol. 41] Resolution.

Whereas, the owners of the number of shares following their names, to-wit: Lucy Bladen, 6 shares; Carl H. Knepper, 3 shares; Edward F. Knepper, 4 shares; Amos Shriver, 26 shares, have failed to pay their assessments on the date fixed for payment of same.

Now, therefore, be it resolved that proceedings be taken to sell such stock as by law provided, and that November 17, 1927, at the hour of 9 A. M. at the office of Woodbine Savings Bank, Woodbine, Iowa, be and the same is hereby fixed as the date and place of the sale of said stock and that notice of such sale be given to each of the above named stockholders, as by law provided.

Moved by Powley, seconded by Hewitt, that the foregoing resolution be adopted and on roll call the vote was, as follows: Powley, Aye, Hewitt, Aye, Haas, Aye.

After general discussion it was moved by Hewitt and seconded by Powley that we adjourn. Carried.

Lewis Haas, Chairman. J. T. Hunt, Secretary.

is as follows:

Notice to Stockholders

To Geo. E. Morse, trustee; Amos Shriver, Carl H. Knepper, Lucy Bladen, G. M. Beardshear, attorney-in-fact for M. L. Dunlap, trustee; M. E. Shriver:

You and each of you are hereby notified that on the 6th day of July, 1927, an assessment of 100 per cent of the par [fol. 42] value of the capital stock held by you in the Woodbine Savings Bank, was ordered levied as provided by Section 9246 of the Code, and pursuant to said order notice was given to each stockholder in writing, signed by the President and attested by the Cashier under seal, and mailed as by said Section provided, and proof of mailing is now on file, and it now appearing that you and each of you have neglected to pay said assessment for more than ninety (90) days from the date of mailing such notice, and it having now been ordered by the Board of Directors that sufficient of the stock held by you and each of you be sold at public auction to make good the deficiency, and the time and place of sale having been fixed and determined upon;

Now, Therefore, you and each of you are notified that there is now due from

Lucy Bladen, Marengo, Iowa	$ 600.00
Carl H. Knepper, Marengo, Iowa	300.00
Edward F. Knepper, Marengo, Iowa	400.00
Amos Shriver, Marengo, Iowa	2600.00

and that on this the 17th day of November, 1927, at the hour of 9 A. M. at the banking house of said Woodbine Savings Bank at Woodbine, Iowa, sufficient of the stock held by you and each of you will be sold at public auction to make good your deficiency upon the amount of your assessment.

Dated at Woodbine, Iowa, this 12th day of October, 1927

Woodbine Savings Bank. Lewis Haas, President. J. T. Hunt, Cashier. Fred Powley, Geo. B. Hewitt, Directors.

[fol. 43] Attached is the following return of service:

STATE OF IOWA,
Harrison County, ss:

I, J. T. Hunt, being first duly sworn, depose and say that I served the within and foregoing Notice to Stockholders of assessment on Geo. E. Morse, Trustee at Ladora, Iowa county, Iowa, by reading the same to him and handing him a true copy of the same on October 13, 1927; that I served said notice on Amos Shriver, Carl H. Knepper, Lucy Bladen, G. M. Beardshear, Attorney in fact for the heirs of Mary E. Misel, deceased at Marengo, Iowa county, Iowa, by reading said notice to them and each of them and handing to each of them a true copy of said notice on October 14, 1927; that I served said notice on M. L. Dunlap Trustee for Mrs. D. S. Dunlap, at Ackley, Hardin County, Iowa, and M. E. Shriver at Jefferson, Greene county, Iowa, by reading said notice to them and each of them and handing them and each of them a true copy of said notice on the 15th day of October, 1927.

J. T. Hunt.

Subscribed in my presence and sworn to before me by the said J. T. Hunt this 21st day of October, 1927.
J. A. Murray, Notary Public, Harrison County, Ia.

EXHIBIT "16" OF EXHIBIT "A"

is a notice to stockholders, identically the same as Exhibit "15" of Exhibit "A" and signed identically the same and has attached the following return of service:

[fol. 44] STATE OF IOWA,
Johnson County, ss:

I, F. L. Smith, Sheriff of said county, hereby certify and return that I received the within notice for service on the 22nd day of October, 1927, and that on the 24th day of October, 1927, at Iowa City Township, in said County, I served the within notice on Edward F. Knepper by offering to read the same to him, which he waived, and by delivering to him personally a true copy thereof.

F. L. Smith, Sheriff, by A. J. Fehrman, Deputy.

Service	.50
Copy	.25
Mileage	.45
Total	1.20

EXHIBIT "17" OF EXHIBIT "A"

is as follows:

Notice

Notice is hereby given that 112 shares of stock of the undersigned bank will be sold at nine o'clock A. M. on the 17th day of November, 1927, at the Woodbine Savings Bank in the town of Woodbine, Iowa, to pay a 100% assessment, amounting to $11,200 due from stockholders of said bank.

Woodbine Savings Bank, by Lewis Haas, President.
by J. T. Hunt, Cashier.

Attached is the following return of publication:

I, A. C. Cahman, publisher of the Missouri Valley Times, a Daily and Weekly newspaper published in Harrison county, Iowa, solemnly swear that the foregoing notice [fol. 45] was published in said paper one consecutive week beginning on the 7th day of November, 1927, and ending on the — day of ——, 192-.

A. C. Cahman.

STATE OF IOWA,
Harrison County:

Subscribed and sworn to before me by A. C. Cahman this 14th day of Nov. 1927. Stantford N. Bird, Notary Public.

Plaintiff rests.

Defendant's Evidence

STATEMENT RE EXHIBITS 18, 19, 20 and 22

The defendant offers in evidence Exhibit "18," being a published copy of the house journal of the 41st G. A. of the State of Iowa, published by the State of Iowa.

Plaintiff waives preliminary proof, but objects to the offer on the ground it is immaterial and irrelevant; overruled, exception.

Exhibit "18" shows that the House of Representatives of the 41st G. A. of the State of Iowa, was composed of 108 members, and in the House of Representatives on the passage of Senate File No. 38, as amended, there was the vote of 64 affirmatives, 5 negatives and 39 absent or not voting.

The defendant offers in evidence Exhibit "19" being a published copy of the Senate Journal of the 41st G. A. of Iowa, published by the State of Iowa.

Plaintiff waives preliminary proof but objects to the offer on the ground it is immaterial and irrelevant. Overruled, exception.

[fol. 46] Exhibit "19" shows that in the Senate there were 50 duly elected, qualified and acting members of the Senate. That on the passage of Senate File 38 as amended in the Senate there were 28 affirmative votes, 9 negative votes and 13 absent or not voting.

It is agreed by and between the plaintiff and defendant that at the time the defendant became the owner of the capital stock of the plaintiff corporation, as agreed in the stipulation Exhibit "A" offered in evidence, that the same had at said time been paid for in full to the plaintiff.

It is agreed by and between the plaintiff and defendant that Exhibit "21" is the by-laws of the plaintiff corporation.

Defendant offers in evidence Exhibit "21"

Plaintiff objects to the same as immaterial, irrelevant and not within the issues, but no objection to preliminary proof is made. Overruled, exception.

Exhibit 21 contains no provision of any kind providing for any assessment of the capital stock of the plaintiff.

It is agreed that Exhibit "22" is the original certificate issued by the plaintiff to the defendant under date of June 8, 1925, for six shares of the capital stock of the plaintiff, and that said certificate was issued in lieu of and as representing the six shares of capital stock of the plaintiff and which the defendant became the owner of on the 14th day of February, 1917, and that there was issued by plaintiff to the defendant a certificate for all the stock owned by the defendant of the plaintiff's capital stock, and that each

[fol. 47] and all of said certificates were in form and wording identically the same as Exhibit "22," except as to the date and the number of shares.

Defendant offers in evidence Exhibit "22." Objected to as irrelevant and immaterial. No bearing on the issues in the case. Overruled, exception.

EXHIBIT "22"

is as follows:

State of Iowa

Number: 112. Shares: 6.

Woodbine Savings Bank, Woodbine, Iowa

Shares $100 Each

This is to certify that Amos Shriver is entitled to Six Shares of the Capital Stock of The Woodbine Savings Bank, of Woodbine, Iowa transferable only on the Books of the Bank in person or by attorney on the surrender of this Certificate. Not transferable by any Stockholder liable to this bank as principal debtor or otherwise without consent of the Board of Directors.

In witness Whereof the President and Secretary have hereunto subscribed their names and caused the Seal of this Bank to be affixed at Woodbine, Iowa, this 8th day of June, 1925.

Lewis Haas, President. Renzie E. Foglesong, Secretary.

Capital: $50,000.00

Defendant rests.
Both parties rest.

MOTION TO DISMISS

Comes now the defendant, and after both sides have rested, and before the case has been submitted to the court [fol. 48] and moves the court to dismiss this cause for the following reasons:

1st. That no valid assessment is shown by the evidence as against this defendant to have been made.

2nd. That the record fails to show that any notice of the claimed assessments, as provided by law, was given to the defendant.

3rd. That the record fails to establish that any notice of the sale, based on the assessment as claimed in this action, was given to the defendant.

4*rd*. That the record fails to show that any notice was published in a newspaper in the county of the plaintiff's place of residence as provided by law.

5th. For the reason that Section 9248-a-1 of the Code of 1927, under which this action is brought, is void in that it is inconsistent with Section 9235 and Section 9238 and 9246 of the Code of 1927.

6th. For the reason that Section 9248-2-1 of the Code of 1927, under which this section was brought and liability against the defendant sought to be established as against this defendant, does not apply, this defendant having been the owner of the capital stock of the plaintiff at and prior to the time of the passage of such act by the Legislature of this state.

7th. That Section 9248-a-1 of the Code of 1927 is unconstitutional and void, as applied to this defendant, for the reason that the amendment by the 41st General Assembly Chapter 181, which attempted to create personal liability against the stockholders was not passed by the constitu-
[fol. 49] tional required majority in each house of the Legislature, the State of Iowa requiring that such an act must be passed by two-thirds vote of each house of the General Assembly.

8th. For the reason that Section 9248-a-1 of the Code of 1927, if applied to the defendant and defendant's stock, is void for the reason that it impairs the terms of a contract existing between the defendant and plaintiff prior to the enactment of the amendment attempting to create liability against the stockholders.

9th. That Section 9248-a-1 of the Code of 1927, if applied to the defendant and stock of the defendant, is unconstitu-

tional and void, for the reason that it takes from the defendant vested rights which were in existence and had vested prior to the enactment of the 41*th* General Assembly of Iowa, the amendment to the law attempting to create personal liability against the owner of capital stock.

10th. For the reason under the law and records in this case there is no way in which a valid assessment could be made against the defendant on his capital stock by the plaintiff except and only by his consent and no such consent is established in this record.

11th. For the reason that Sections 9247, 9248 and 9248-a-1 of the Code of 1927, if applied to the defendant and as against the stock owned by the defendant, is unconstitutional and void in that they are coercing and attempting to take the property of the defendant away from him without his consent, which under the Constitution of the State of [fol. 50] Iowa and the Constitution of the United States is prohibited.

By agreement of parties the above motion may be considered and ruled upon by the court in the final decision of this cause.

On the 21st day of May, 1928, there was duly entered in said cause by the District Court of the State of Iowa in and for Iowa County the following Decision and Judgment, which was duly recorded in District Court Record 28 page 149 of the Office of the Clerk of the District Court of Iowa County, Iowa. Said

JUDGMENT

is as follows:

The above entitled cause was on the 12th day of April, 1928, same being one of the days of the regular April, 1928 Term of said court, by agreement of the parties tried to the court before H. D. Evans, one of the judges of the 8th Judicial District, a jury being waived; Bolter & Murray and Hatter & Harned appearing as attorneys for the plaintiff, and Wallace and Claypool appearing as attorneys for the defendant, and it was agreed in open court that said cause should be decided and judgment rendered in vacation

with the same force and effect as if in term time. Evidence was introduced by both parties, and at the close of said evidence defendant moved the court to direct a verdict in his favor upon grounds set forth in the record, ruling upon such motion being by agreement reserved until the final decision of this cause.

[fol. 51] Said cause having been tried, argued and submitted to the court, and the court having duly examined the files, pleadings, evidence and exhibits, and being now fully advised in the premises, finds:

That plaintiff was duly and legally incorporated as a savings bank under the laws of the State of Iowa on the 6th day of May, 1891 and at said time adopted articles of incorporation.

That on the 11th day of May, 1911 the franchise of plaintiff under its original articles having expired, plaintiff duly and legally reincorporated and reorganized as a savings bank under the laws of the State of Iowa, and at said time adopted amended and substituted articles of incorporation.

That on the 27th day of February, 1920, plaintiff duly and legally adopted an amendment to its articles of incorporation increasing its capital stock from $30,000 to $50,000.

That on the 26th day of January, 1917, plaintiff duly and legally adopted an amendment to its articles of incorporation and provided that the affairs of plaintiff corporation should be conducted and managed by a board of five directors.

That on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired to the extent of 100% or $50,000, and that on said date the Superintendent of Banking of the State of Iowa so determined. That on February 15, 1927, said Superintendent of Banking addressed an order to plaintiff bank and to the several members of plaintiff's Board of Directors, requiring an assessment against the stock in plaintiff bank and fixing the amount thereof at 100% or $50,000. That said order was in writing and was [fol. 52] addressed to and received by plaintiff bank and by each of the five directors thereof on or about the 16th day of February, 1927.

That on March 10, 1927, the Board of Directors of plaintiff bank at a meeting duly and legally called passed and adopted a resolution levying an assessment of 100%

against the stock and stockholders of plaintiff bank and caused said deficiency to be made good by ratable assessment upon the stockholders for the amount of stock held by them, and directing that notice thereof be given to each of the stockholders as provided by law. That thereafter plaintiff gave the stockholders of said bank, including the defendant, certain notices in writing signed by the president and attested by the cashier of plaintiff bank under plaintiff's seal, by depositing said notices in the Post Office at Woodbine, Iowa, addressed to the stockholders, including defendant, at their last known residences; that said notices advised the stockholders of the said assessment, the entire sum to be raised, and the amount due from each stockholder, and one of said notices was duly received by defendant in the regular course of the United States mail.

That defendant failed, neglected and refused and still fails, neglects and refuses to pay the claimed assessment against him and against the stock belonging to him.

That on the 4th day of October, 1927, the Board of Directors of plaintiff bank at a regular meeting duly and legally called and held adopted a resolution to cause sufficient of the stock belonging to and held by defendant to be sold at public auction to make good the deficiency and fixing the [fol. 53] time and place thereof as the 17th day of November, 1927, at the office of plaintiff bank at Woodbine, Iowa. That plaintiff gave notice to all stockholders failing to pay the assessment above referred to, including the defendant, reciting the assessment made, the amount due thereunder from the respective stockholders, including the defendant, and the time and place of sale, that said notice was served personally upon defendant on October 14, 1927.

That on the 7th day of November, 1927, plaintiff caused to be published and there was published in the Missouri Valley Times, a newspapers of the county in which plaintiff bank is located, a notice of said sale, and that said notice was published in one issue of said newspaper on the 7th day of November, 1927.

That on the 17th day of November, 1927, at a public auction sale held at the banking house of plaintiff at Woodbine, Iowa, the stock owned and held by said stockholders not paying the assessment as aforesaid, including the defendant, was sold to the highest and best bidder; the twenty-six shares of stock belonging to defendant being

then and there sold for the sum of $1.00 per share, or a total of $26, which said amount was duly credited on said assessment, leaving a deficiency on said assessment on the stock held by defendant in the amount of $2574.

That all the stock owned and held by the stockholders in plaintiff bank who failed, neglected and refused to pay the assessment hereinbefore referred to, was sold on the 17th day of November, 1927, at the banking house of plaintiff in [fol. 54] Woodbine, Iowa, and that all of said stock was sold for $1.00 per share.

That defendant never attended any stockholders meetings of said bank and was given no notice of any stockholders meeting in connection with the said assessment and was given no notice of any stockholders' meeting in connection with the sale of defendant's stock. That subsequent to the year 1911 and prior to March, 1925, defendant was paid and accepted dividends on the stock in plaintiff bank held by him.

That at the time of the convening of the 41st General Assembly of Iowa there were 108 duly elected and qualified and acting members of the House of Representatives and 50 duly elected, qualified and acting members of the Senate of Iowa; that the final vote cast by the House of Representatives in connection with Senate File No. 38 as amended was as follows: 64 affirmatives; 5 negatives and 39 absent or not voting; that the final vote cast in the Senate of Iowa in connection with said Act known as Senate File No. 38 as amended was as follows: 28 affirmatives; 9 negatives and 13 absent or not voting, as shown by the Senate and House Journal published by the State of Iowa, it having been agreed that copies of such Senate and House Journal could be received in evidence in lieu of the original journals with the same force and effect as though the original of said journals were offered and received in evidence.

That defendant did on the 18th day of May, 1891 become the owner of 10 shares of the capital stock of plaintiff corporation, said stock being of the par value of $100 a share, [fol. 55], or a total par value of $1000, and that said defendant continued to own said 10 shares of stock in plaintiff corporation until November 17, 1927. That on the 16th day of April 1906, defendant became the owner of 10 shares of the capital stock of plaintiff corporation, said stock being of the par value of $100 a share or a total par value of

$1000, and that said defendant continued to own said stock until November 17, 1927. That on Feb. 14, 1917, defendant became the owner of six and one-sixth shares of the capital stock of plaintiff corporation and thereafter he was informed by plaintiff that the banking department of the State of Iowa was criticizing plaintiff in that a part of its bank stock was owned in fractional shares. That thereafter he sold one-sixth share of said stock, surrendering the certificate to plaintiff representing said six and one-sixth shares of stock and on the 8th day of June, 1925, in lieu thereof received a certificate from plaintiff bank for said six shares of stock of said bank of the par value of $100 a share, or a total par value of $600, and that said defendant continued to own said stock until Nov. 17, 1927. That when defendant became the owner of the respective shares of stock as aforesaid same was paid for in full.

The court further finds that there is nothing in the pleadings or evidence in this case to indicate when the capital stock in plaintiff bank became impaired by losses or otherwise and the court presumes and therefore finds that the impairing of said capital stock and the causes of such impairment occurred subsequent to the passage and taking effect of Chapter 181, Section 1 of the Acts of the 41st General [fol. 56] Assembly of Iowa, which said Act is now Section 9248-a-1 of the 1927 Code of Iowa.

The court further finds that the assessment required upon the stockholders of plaintiff bank, including the defendant, by the Superintendent of Banking of the State of Iowa as aforesaid, the action and resolution of the Board of Directors of said bank carrying into effect the order of the Superintendent of Banking and causing said assessment to be made; the notice of said assessment given to defendant and the return of service thereof; the action and proceedings of the directors causing the stock of defendant to be sold for non-payment of the assessment; the notices to defendant of the assessment, the time and place of sale, and the sale of said stock at public auction and the service thereof as appearing by the foregoing facts herein, and all proceedings in connection with said assessment upon defendant's stock, and the sale thereof at public auction, are in due and legal form, were conducted and had in the manner contemplated by law and are in compliance with Sections 9246, 9247 and 9248 of the 1927 Code of Iowa.

The court now having duly considered the motion of defendant to direct a verdict in his favor hereinbefore referred to and being fully advised, it is ordered that said motion be and the same is hereby overruled as to all grounds.

The court, therefore, finds that Section 9248-a-1 of the 1927 Code of Iowa, one of the statutes upon which plaintiff's cause of action is based is not vulnerable to any of the objections or defenses interposed by defendant in his answer as amended or during the trial of said cause, and that plaintiff is, therefore entitled to judgment against defend- [fol. 57] ant for the sum of $2574, together with interest at 6% per annum from Nov. 17, 1927, and for the costs of this action as prayed for in its petition.

It is Therefore ordered and adjudged that judgment be and same is hereby rendered against the defendant, Amos Shriver, and in favor of plaintiff, for the sum of $2574, with interest at 6% thereon from Nov. 17, 1927, nd for the costs of this action.

To all of which defendant excepts.

H. D. Evans, Judge.

May 21, 1928.

NOTICE OF APPEAL

The defendant perfected an appeal to the Supreme Court of the State of Iowa by serving upon the plaintiff, and the Clerk of the District Court of Iowa County, Iowa, a proper notice of appeal in said cause appealing from said judgment, decision and all rulings adverse to defendant to the Supreme Court of Iowa, all done on the 12 day of June, 1928, and which notice was on said date filed in the office of the Clerk of the District Court of Iowa County, Iowa.

CERTIFICATE OF ATTORNEYS

We hereby certify the foregong is a full, true and complete abstract of the pleadings, proceedings and testimony and all other matters of record in said cause, and constitutes a full and complete abstract of the entire record made in said cause in the lower court.

Wallace & Claypool, Attorneys for Appellant.

[fols. 58-62] NOTICE OF ORAL ARGUMENT

Notice is hereby given that on the submission of this case appellant will orally argue the same.

Wallace & Claypool, Attorneys for Appellant.

[fol. 63] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed August 25, 1928

1

The court erred in entering judgment against appellant for the reason that Sec. 9248-a1 Code of 1927 (Chap. 181 Acts 41 G. A.) does not apply to appellant because appellant became the owner and holder of his stock in appellee bank prior to the enactment of said statute. The statute should be given a prospective construction and when given such construction it does not apply to bank stock in existence prior to the passage of the statute. Aside from said statute there is no personal liability on holders of bank stock to pay an assessment thereon to rehabilitate impaired capital of the bank (Appl'ts Abst. page 56, line 28).

2

The court erred in overruling the 6th ground of appellant's motion to dismiss plaintiff's case for the reason that Sec. 9248-a1 Code of 1927 (Chap. 181 Acts 41 G. A.) does not apply because the appellant became the owner and holder of his stock in appellee bank prior to the enactment of said statute. Said statute should be given a prospective construction and when given such construction it does not apply [fol. 64] to bank stock issued and in existence prior to the time of passage of said statute. Aside from said statute there is no authority of law for a personal judgment against the owner of bank stock for failure to pay an assessment thereon to make good impaired capital of the bank (Appl'ts Abst. page 47, line 32, and Appl'ts Abst. page 56, line 23.)

3

The court erred in entering judgment against appellant for the reason that Sec. 9248-a1 Code of 1927 (Chap. 181 Acts 41 G. A.) as applied to appellant impairs the obligation of contract in violation of Sec. 10 Article 1 Constitution of the United States and Sec. 21 Article 1 Constitution of Iowa, because appellant was the owner and holder of his stock in appellee bank prior to the passage of said statute and said stock of appellant was fully paid up stock, and said statute as applied to appellant adds a new duty and obligation to the stockholder's contract existing between appellant and appellee not imposed by such contract when made. Aside from said statute there is no authority of law for a personal judgment against the owner of bank stock for failure to pay and assessment thereon to make good impaired capital (Appl'ts Abst. page 50, line 18).

[fol. 65]

4

The court erred in overruling the 8th ground of appellant's motion to dismiss plaintiff's case or direct a verdict for appellant, for the reason that Sec. 9248-a1 Code 1927 (Chap. 181 Acts 41 G. A.) as applied to appellant impairs the obligation of contract in violation of Sec. 10 Article 1 Constitution of the United States and Sec. 21 Article 1 Constitution of Iowa because appellant's stock was issued and in existence and appellant was the owner thereof prior to the passage of said statute and there is no authority of law aside from said statute for personal judgment against owner of bank stock for failure to pay assessment thereon (Appl'ts. Abst. page 49, line 5 as to motion; Appl'ts. Abst. page 56, line 23 for ruling).

5

The court erred in entering judgment against appellant for the reason that Section 9248-a1 Code of 1927, the statute under which the claimed liability of appellant to appellee is based, violates the Fourteenth Amendment to the Constitution of the United States and Section 9 Article 1 Constitution of Iowa as applied to appellant who was the owner and holder of his stock in appellee bank prior to the enactment [fol. 66] of said statute in that said statute deprives appellant of his property without due process of law, and

there is no other authority of law for a personal judgment against the owner of bank stock for an assessment to rehabilitate impaired capital of the bank (App'l't's Abst. page 50, line 14).

6

The court erred in overruling the 9th and 11th grounds of appellant's motion to dismiss plaintiff's case, or direct a verdict for appellant, made at the close of all the evidence, for the reason that Section 9248-a1 Code of 1927, the statute under which the claimed liability sought to be enforced against this appellant is based, if applied to appellant, the holder and owner of his stock in appellee bank prior to the enactment of said statute, violates the 14th Amendment to the Constitution of United States and Section 9 of Article 1 Constitution of Iowa by taking appellant's property without due process of law and there is no legal basis for personal judgment against the owner of bank stock for an assessment to rehabilitate impaired capital unless it be said statute (App'l't's Abst. page 49, line 12, page 49, line 27, and page 56, line 23).

7

The court erred in entering judgment against appellant [fol. 67] for the reason that Section 9248-a1 Code of 1927, as applied to appellant, the owner and holder of stock in appellee bank prior to the enactment of the said statute, impairs the obligation of the contract existing between appellant and appellee prior to the enactment of said statute in violation of Section 10 Article 1 Constitution of United States and Section 21 Article 1 Constitution of Iowa, and deprives appellant of his property without due process of law in violation of the 14th Amendment to Constitution of United States and Section 9 Article 1 Constitution of Iowa unless said statute is a proper exercise of the reserved power of the state and if an exercise of such reserved power said statute is void because not passed by a two-thirds vote of each branch of the General Assembly as required by Section 12 Article 8 Constitution of Iowa (App'l't's Abst. page 50, line 17).

8

The court erred in overruling the 7th ground of appellant's motion to dismiss plaintiff's case at the close of all the evidence for the reason that Section 9248-a1 Code of 1927 as applied to appellant, the owner and holder of stock in appellee bank prior to the enactment of said statute, im-
[fol. 68] pairs the obligation of the contract existing between appellant and appellee before the passage of said statute in violation of Sec. 10 Article 1 Constitution of United States and Sec. 21 Article 1 Constitution of Iowa, and deprives appellant of his property without due process of law in violation of the 14th Amendment to the Constitution of United States and Sec. 9 Article 1 Constitution of Iowa unless said statute be an exercise of the reserve power of the state, and if so, said statute is void and unconstitutional because not passed by a two-thirds vote of each branch of the General Assembly as required by Section 12 Article 8 Constitution of Iowa (App'l't's Abst. page 48, line 29 for 7th ground of motion; Appl'ts Abst. page 56, line 23 ruling).

9

The court erred in entering judgment against appellant for the reason that 9247, 9248, 9248-a1 Code of 1927 are inconsistent with Sections 9235, 9238, 9246 of the Code of 1927 and therefore said first three named sections of the code are void and give appellee no right to recover against appellant in this case (App'l't's Abst. page 50, line 17).

10

The court erred in overruling the 5th ground of appel-
[fol. 69] lant's motion to direct a verdict, or dismiss plaintiff's case at the close of all the evidence for the reason that Section 9248-a1 Code of 1927 is inconsistent with Sections 9235, 9238, 9246 Code of 1927 and said first named section is therefore void and gives appellee no right to recover in this action (App'l't's Abst. page 48, line 16; App'l't's Abst. page 56, line 23).

[fol. 70] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

OPINION—Filed June 24, 1929

[Title omitted]

Action by savings bank to recover from a stockholder upon an assessment to restore impaired capital of said bank. From a judgment in behalf of the plaintiff, the defendant appeals. Reversed.

Wallace & Claypool, of Williamsburg, for appellant.
Bolter & Murray, of Logan, and Hatter & Harned, of Marengo, for appellee.

FAVILLE, J.:

The appellee was incorporated as a savings bank, under the laws of this state, May 6, 1891. Twenty years later to wit, May 11, 1911, the bank was reincorporated. In February, 1920, the capital stock was increased from $30,000 to $50,000. The appellant was the owner of 26 shares of [fol. 71] stock in said bank. Ten of said shares were acquired about the time of the original incorporation, to wit, May 18, 1891. Ten more shares were acquired April 16, 1906. Six and one-sixth shares were acquired February 14, 1917. The certificate therefor was surrendered, and a new certificate for six shares, representing however the same stock, was issued June 8, 1925. On February 15, 1927, the capital stock of said bank was impaired to the extent of 100 per cent thereof, and on said date the superintendent of banking of the state determined that said capital stock was so impaired and ordered the board of directors of said bank to collect an assessment against the stock of said bank in the amount of 100 per cent. The proper proceedings were taken, notices were given of the assessment, and on or about the 4th day of October, 1927, due notice of the time and place of sale of appellant's stock was had, and on the 17th day of November, 1927, appellant's said shares of stock were duly offered for sale at public auction and were sold by the appellee for the sum of $1 per share, or a total of $26. This action is

brought to recover from the appellant the deficiency between the amount of said assessment and the said $26, to wit, the sum of $2,574. It is conceded by all parties that the said assessment is predicated solely on the pro- [fol. 72] visions of chapter 181 of the Acts of the Forty-First General Assembly, which became effective March 13, 1925, and which is now embodied in section 9248a1 of the Code of 1927. No question is raised but that the stock of the appellant was subject to an assessment by reason of impairment of the capital stock of the appellee bank. Chapter 29 of the Acts of the Twenty-Fifth General Assembly, providing for such assessment, became effective May 5, 1894. This statute was carried into the Code of 1897 in sections 1878, 1879 and 1880. Said sections are substantially embodied in the Code of 1927 in sections 9246-9250. These several statutes, as they existed prior to the enactment of Chapter 181 of the Acts of the Forty-First General Assembly, provided for an assessment to be made against shareholders of a savings bank to replace the impaired capital of such a bank. The sole provision, however, in the statutes as they then existed, for the enforcement of such an assessment, was that a sufficient amount of the capital stock held by a stockholder could be sold at public auction after proper notice to satisfy said assessment. It was under these statutory provisions that the appellant held his stock prior to the enactment of chapter 181 of the Acts of the Forty-First General [fol. 73] Assembly. Said statute placed a new liability upon the holder of said stock in the event of an assessment to replace impaired capital. Not only could the stock of the stockholder be sold to satisfy such an assessment, but a personal liability was created for the balance of said assessment above the amount for which the stock sold. Chapter 181 amended the existing statute by adding thereto the following: "Should the proceeds of a sale hereunder of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

At the time the appellant became the owner of his shares of stock the then existing law imposed no personal liability on the stockholder to replace the impaired capital

of such a bank. Leach v. Arthur Savings Bank, 203 Iowa, 1052, 213 N. W. 772.

I. The validity of said chapter 181 as applied to the appellant is attacked on the ground that it impairs the obligations of appellant's contract as a stockholder in said bank. It is contended, however, by appellee that the statute in question is valid because of the reserved power which the Legislature has over corporations as found in section 12, article 8 of the Constitution of Iowa. Said section 12 [fol. 74] of article 8 is as follows: "Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

It is stipulated of record in this case that at the time of the convening of the Forty-First General Assembly of Iowa there were 108 duly elected and qualified members of the House of Representatives and 50 duly elected and qualified members of the Senate, and that upon the passage of the said act in question, in the House of Representatives there were 64 affirmative votes, 5 negative votes, and 39 absent or not voting, and that on the final vote cast in the Senate there were 28 affirmative votes, 9 negative votes, and 13 absent or not voting; so that, under the stipulation, it clearly appears that the act in question did not receive a two-thirds vote of each branch of the General Assembly at the time it was passed. Therefore, if the act in question be construed to be one that comes within the purview of section 12 of article 8 of the Constitution (a question which we do not determine), still said section of the Constitution has no applicability because the act was [fol. 75] not adopted by such a vote of the General Assembly as is required by said provision of the Constitution.

(1) II. It is contended that the act in question is valid because of the reserved power vested in the Legislature over corporations, as provided in section 8376 of the Code of 1927. At the time the appellee bank was organized and appellant acquired his stock therein, there was in force

section 1619, Code 1897 (Code of 1927 as section 8376). Said section is as follows:

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

The so-called reserved power retained by the General Assembly by the constitutional provision, section 12, article 8, and by section 8376 of the Code of 1927, has been [fol. 76] adopted in various forms by the several states. These provisions are not identical in phraseology, in the various Constitutions and statutes. They are all the outgrowth of the decision of the Supreme Court of the United States in the famous Dartmouth College Case, 4 Wheat. 518, 4 L. Ed. 629. It was therein held that a charter from a state to a corporation was a contract within the meaning of the federal Constitution forbidding a state to pass any law impairing the obligation of contracts. The suggestion of Mr. Justice Story in the concurring opinion filed in that case in regard to a reserved power to amend articles of incorporation was the inspiration for the constitutional and statutory provisions referred to. They have been the fruitful source of much litigation, and of many divergent decisions. Said section 8376 first appeared in our statutes as section 1090 of the Code of 1873. It reappeared in Code of 1897 as section 1619, and in the Code of 1924 and the Code of 1927 as section 8376. There has been no change in said section through any of these Codes. The appellee bank was organized originally under chapter 60 of the Acts of the Fifteenth General Assembly, which was "an act to Provide for the Organization and Management of Savings Banks." The re-incorporation was by so-called "amended and substituted articles of incorporation" which were [fol. 77] executed on May 10, 1911, and they recited that the corporation was organized as a savings bank under chapters 10 and 12 of title 9 of the Code of 1897. Said sec-

tion 1619 of the Code of 1897 was a part of said title 9, and hence was applicable to said corporation at the time appellant acquired his stock. Also at said time sections 1878 and 1879 of the Code of 1897 were in effect providing for an assessment to restore impaired capital of a bank and for the sale of stock to satisfy such assessment.

With this situation before us we are confronted by two questions: (1) Is said chapter 181 (Code 1927, sec. 9248-a1) within the reserved power of the Legislature? And (2) is it applicable to the appellant? In St. John v. Building & Loan Ass'n, 136 Iowa, 448, 113 N. W. 863, 15 L. R. A. (N. S.) 503, we said:

"But a corporation under our laws has no absolute right to do business in this State, and its articles of incorporation are at all times subject to amendment by the General Assembly. Conditions may at any time be imposed upon a corporation and enforcement thereof assured by revoking their privileges in the event of noncompliance."

The terms of this statute are very broad. For the purposes of this case we assume that the "franchise" therein [fol. 78] referred to is the general franchise of the cooperation under which the corporation came into being. See State v. Iowa Telephone Co., 175 Iowa, 607, 154 N. W. 678, Ann. Cas. 1917E, 539. It is this franchise of the corporation that may be regulated or withheld, and which is subject to conditions imposed upon the enjoyment thereof by the General Assembly.

One of the conditions imposed by statute upon the enjoyment of the franchise which the appellee bank acquired at the time of its organization was that under certain conditions the board of directors of said bank should impose an assessment upon the stockholders for the purpose of restoring impaired capital. It was also provided by statute that, in the event a stockholder neglected or refused to pay his assessment, the board of directors of the bank should cause a sufficient amount of his stock to be sold to satisfy said assessment. The new statute provides an additional regulation to the effect that, if the sale of stock is insufficient to pay the assessment, the stockholder shall be personally liable for the deficiency and this liability is to be collected by suit brought "in the name of the bank."

The statute making said additional provision regarding

the collection of said assessment was supplementary to [fol. 79] the existing legislation and in keeping therewith. We think it was clearly within the reserved power of the Legislature under said section 8376. It pertained directly to the enjoyment of the franchise of the corporation, and it was within the power of the Legislature to impose such additional condition upon the enjoyment of its franchise by the corporation. It pertained directly to the subject of "conditions imposed upon the enjoyment" of its franchise by the corporation and was within the purview and scope of the reserved power.

As illustrating somewhat the authority of the Legislature over corporations under the reserved power, see Miners' Bank of Dubuque v. United States, 1 G. Greene, 553; Rodemacher v. Milwaukee & St. P. R. Co., 41 Iowa, 297, 20 Am. Rep. 592; Marshalltown Light, Power & Railway Co. v. City of Marshalltown, 127 Iowa, 637, 103 N. W. 1005; Sioux City Street Ry. Co. v. City of Sioux City, 78 Iowa, 367, 43 N. W. 224; Id., 138 U. S. 98, 11 S. Ct. 226, 34 L. Ed. 898.

(2) III. In the preceding division we have considered the statute in its relation to the corporation itself. A different and more perplexing question arises, however, when we consider the effect of the statute upon the rights of the appellant as a stockholder who acquired his stock prior [fol. 80] to the enactment of said statute. Granting the right of the General Assembly to enact the statute as affecting the corporation, the question still remains as to the effect of such legislation upon the rights of the appellant as an existing stockholder in said corporation. In Cook on Corporations (8th Ed.) Sec. 492, it is said: "The charter of a corporation having a capital stock is a contract between three parties, and forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, it is a contract between the corporation and the stockholders; third, it is a contract between the stockholders and the state."

The power reserved in the General Assembly was the power to affect the contract between the state and the corporation. Under said reserved power this contract could be impaired without violating the federal Constitution respecting the obligation of contracts; but the question is, Could such reserved power on the part of the Legislature affect the existing contract between the corporation and

its stockholders by imposing additional obligations or liabilities upon the stockholders, as to them existing conditions?

At the time chapter 181 was enacted there was a contractual relation existing between appellant as a stockholder [fol. 81] and the corporation, as to the liability for an assessment to restore impaired capital. That relation between said parties may not be altered by the legislature as to the then existing situation. The liability of the stockholder for any impairment then existing could not be increased by legislative enactment without impairing the obligation of the contract between the corporation and the stockholder.

In St. John v. Building & Loan Ass'n, supra, we said: "It will be noted that the act itself does not attempt to change the contracts of members, but it does provide that, if the association failed to comply therewith on or before July 15, 1900, its authority to do business should cease, and its affairs should be wound up, and settlements made with all members according to the provisions of the act. Defendant then had the option of complying with the law and adjusting its outstanding contracts on the basis outlined in the act, or of going out of business and settling with its members upon the basis fixed in section 7 of the act (Acts 28th Gen. Assem. c. 69). It had no constitutional or other right to continue in business indefinitely or for any other time than the Legislature might see fit to permit. This is a fundamental principle of corporate law under the reserved power now generally given to the Legislature. [fol. 82] Bishop v. Brainerd, 28 Conn. 289; In re Brooklyn R. R., 72 N. Y. 245; ((Id.) 75 N. Y. 335, (Id.) 81 N. Y. 69). *Of course, the relation between the corporation and its stockholders cannot be changed or disturbed against their will.* All that the Legislature may do in this respect is to grant the power, and then it is for the corporation to accept or not as it pleases. Kenosha Co. v. Marsh, 17 Wis. 13." (The italics are ours.)

As bearing on the question, see, also, Garey v. St. Joe Mining Co., 32 Utah, 497, 91 P. 369, 12 L. R. A. (N. S.) 554; Union Pacific R. R. Co. v. United States, 99 U. S. 700, 25 L. Ed. 496; Central Pac. R. R. Co. v. Albert Gallatin, 99 U. S. 727, 25 L. Ed. 504; Hathorn v. Calef, 2 Wall. 10, 17 L. Ed. 776; New Orleans, etc., R. Co. v. Harris, 27 Miss.

517; Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559; Fairchild v. Masonic Hall Ass'n, 71 Mo. 526.

We therefore hold at this point that the statute could not and did not affect the liability of the appellant as a stockholder in the bank as to any impairment of stock that existed at the time said statute became effective.

(3) IV. However, a different rule must pertain as to any impairment that came into being after the passage of chapter 181. A new and additional personal liability is imposed thereby, but this can only have reference to an [fol. 83] assessment for impaired capital that is subsequently created. The statute looks to the future and not to the past. The statute as to said stockholder must be treated as prospective and not retroactive. We have recently had occasion to discuss the question of prospective and retroactive statutes in the case of Thomas v. Disbrow, 224 N. W. 36, filed March 5, 1929, and it is not necessary that we repeat the discussion or cite the authorities therein contained. Such a prospective statute is not violative of constitutional rights. Sherman v. Smith, 1 Black, 587, 17 L. Ed. 163; Williams v. Nall, 108 Ky. 21, 55 S. W. 706; Smathers v. Western Carolina Bank, 135 N. C. 410, 47 S. E. 893; Sleeper v. Goodwin, 67 Wis. 577, 31 N. W. 335; State v. Brown & Sharpe Mfg. Co., 18 R. I. 16, 25 A. 246, 17 L. R. A. 856; Pate v. Bank of Newton, 116 Miss. 666, 77 So. 601; Enterprise Ditch Co. v. Moffit, 58 Neb. 642, 79 N. W. 560, 45 L. R. A. 647, 76 Am. St. Rep. 122; Yoncalla State Bank v. Gemmill, 134 Minn. 334, 159 N. W. 798, L. R. A. 1917A, 1223; Norris Safe & Lock Co. v. Weaver, 81 Or. 670, 160 P. 807; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559.

The cases are by no means free from conflict, but we think the foregoing rule is logical and consistent with constitutional requirements.

[fol. 84] (4) V. Under the rules herein announced the question arises as to whether or not the appellant is liable under the record in this case. Conceding that the appellant might be liable for an impairment of the capital stock that accrued after the enactment of chapter 181 and while appellant retained his stock, the question as to when the impairment occurred would be one of fact to be determined from the evidence in the case. There is no showing

as to when the impairment occurred except the stipulation "that on the 15th day of February, 1927, the capital stock of plaintiff bank was impaired to the extent of 100% or fifty thousand dollars." There is no presumption as to when said impairment was in fact created, and the record is silent in regard thereto.

Under the record we think the appellee failed to establish any liability on the part of the appellant for the deficiency in the assessment sued upon. It therefore follows that the judgment of the district court must be, and it is, reversed.

Evans, Stevens, Kindig, and Wagner, JJ., concur.

[fol. 85] IN THE SUPREME COURT OF IOWA

[Title omitted]

ORDER GRANTING REHEARING—Filed June 23, 1930

Petitions for rehearing of both sides having been fully considered by the Court are granted. It is ordered by the Court that this cause be resubmitted in print at the September, 1930, Term of this Court with cases from the Eighth Judicial District.

[File endorsement omitted.]

[fol. 86] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

[Title omitted]

OPINION—Filed April 10, 1931

This action was brought by the plaintiff to recover from the defendant, a stockholder, upon an assessment against such stockholder to restore the impaired capital of said bank, under the provisions of Section 9248.a1 of the 1927 Code. A judgment was entered in plaintiff's favor and the defendant appeals therefrom.

Affirmed.

[fol. 87] KINDIG, J.:

On May 6, 1891, the plaintiff-appellee was incorporated as a savings bank under the laws of Iowa. Thereafter, at the expiration of the charter thus granted, the appellee was re-incorporated May 11, 1911. The capital stock of the appellee bank was increased in February, 1920, from $30,000 to $50,000. At that time the defendant-appellant owned 26 shares of this stock.

Appellant's stock was obtained upon three different occasions as follows: 10 shares on May 18, 1891; 10 shares on April 16, 1906 and 6 1/6 shares on February 14, 1917. For some reason there was later a reissuance of the certificate for the 6 1/6 shares, and the amount reduced to 6 shares. Later the appellee bank's capital stock became impaired to the extent of 100 per cent, and, on February 15, 1927, the state banking superintendent ordered an assessment to restore the stock's value. Consequently the proper proceedings were taken and the assessment duly made. Then, according to law, appellant's stock was sold November 17, 1927, for the sum of one dollar per share, or a total of $26.00. This action was brought for the purpose of recovering from the appellant the deficiency, due under the assessment against him, after applying the said $26.00. [fol. 88] In other words, the amount demanded from the appellant by the appellee is $2,574. After a hearing the district court found against the appellant and gave appellee judgment for the amount claimed.

There is no question raised concerning the non-liability of appellant for the assessment to restore the value of the bank's stock. But it is claimed by appellant that his liability ceased when his stock was sold; that is to say, appellant contends that he, under the state and federal constitutions, cannot be made liable personally for the deficiency above named. The basis for appellant's argument in this regard is that under the Iowa statutes, in existence when the stock was purchased, there was no personal liability for the assessment; while now, under the amended statutes there is a personal liability. It is the personal liability that appellee seeks to enforce here. Therefore, appellant maintains that his contract will be impaired if the personal liability is enforced against him. An impairment of contract is not permitted under the state and fed-

eral constitutions, and the primary question for determination here is whether or not the personal liability sought to be enforced is an impairment of appellant's contract under the constitutional provisions.

[fol. 89] Apparently this legislation first appeared in Chapter 29, Acts of the Twenty-Fifth General Assembly, which became effective May 5, 1894. Such legislation was later codified and became sections 1878, 1879, and 1880 of the 1897 Code. Those sections of the 1897 Code are now substantially embodied in Sections 9246 to and including 9250 of the 1927 Code. For convenience, the foregoing provisions of the 1927 Code are here set forth:

"9246. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required."

"9247. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the post office, addressed to the last known residence of the stockholders, [fol. 90] proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder."

9248. "Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and time and place of sale;

proof of all which may be made in the manner provided in the preceding section."

About the foregoing statutory provisions the appellant makes no complaint, but he does attack Section 9248-a1 of the 1927 Code, which reads as follows:

"Should the proceeds of a sale under the preceding section of all of the stock of any stockholder be insufficient to [fol. 91] satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

Said last-named statute was enacted March 13, 1925 by the Forty-First General Assembly, as shown by Chapter 181 of the acts thereof. Because Section 9248-a1, aforesaid, was not in existence when appellant purchased his stock in the appellee bank, he argues that his contract with the state and with the bank's other stockholders cannot be controlled by the new legislation. Under the contract arising through the old statutory provisions, appellant says that his stock could be appropriated for the purpose of paying the assessment, but that he was not personally liable therefor. See Leach vs. Arthur Savings Bank, 203 Iowa, 1052. Hence, because the new statute authorizes a personal liability, appellant contends that his contract aforesaid is changed and thereby impaired. Such impairment, appellant insists, is not avoided under the reserve power of the Iowa Constitution and the statutes enacted in connection therewith. That reserve power is set forth in section 12, Article 8 of the Iowa Constitution, as follows:

"Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the [fol. 92] organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

Thereunder the legislature of this state adopted the following statute, set forth as section 1619 of the 1897 Code:

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged, or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

Those provisions contained in section 1619 of the 1897 Code are substantially the same as the ones embodied in section 1090 of the 1873 Code. So, when the appellee bank was incorporated, the foregoing constitutional and statu- [fol. 93] tory provisions were operative. The principles announced in the well-known Dartmouth College Case, therefore, are not applicable to Iowa Corporations within the realm of the foregoing reserve power. Appellant, however attempts to avoid the reserve power doctrine by arguing that the assessment liability created by Section 9248-a1 is not within such reservation. To illustrate, appellant claims that there is a distinction between the assessment in question and an assessment imposed for liquidation purposes. A line of demarcation appears, appellant urges, because, on the one hand, the state granted the stockholder freedom from the corporate debts to the extent only of the assessment for liquidation purposes; while, on the other, the state granted the stockholder nothing, but imposed upon him a liability for the purpose of restoring the value of impaired stock. See: Garey vs. St. Joe Mining Company, 91 Pac. 369; Yoncalla State Bank vs. Gemmil, 159 N. W. 798 (Minn.); County of Santa Clara vs. Southern Pacific, 13 Fed. 722; Central Pacific R. R. Co. vs. Albert Gallatin, 99 U. S. 727.

Because the state granted a concession to the stockholder when it freed him from liability for the corporate debts, appellant concedes that such grant may be entirely [fol. 94] withdrawn and the stockholder compelled to bear a greater liability for the debts. See Williams vs. Nall, 55 S. W. 706; Walsh vs. Shanklin, 31 L. R. A. (N. S.) 365, 102 S. W. 291; Whitman vs. National Bank, 176 U. S. 559; Sherman vs. Smith, 1 Black, 587; Smathers vs. West-

ern Carolina Bank, 47 S. E. 893; Sleeper vs. Goodwin, 31 N. W. 335; State vs. Brown & Sharpe Mfg. Co., 25 A. 246; Pate vs. Bank of Newton, 77 So. 601; Enterprise Ditch Co. vs. Moffit, 79 N. W. 560 (Nebr.); Norris Safe & Lock Co. vs. Weaver, 160 Pac. 807; Coffin vs. Rich, 71 Am. Dec. 559.

Yet, because Section 9248-a1 of the 1927 Code does not withdraw a grant, but rather extends a liability, appellant maintains that the same is not within the reserve power above mentioned, and therefore falls within the principles announced in the famous Dartmouth College case. As to whether appellant is right about this, we do not now decide. His contention in this regard can in any event find support only in the proposition that before section 9248-a1 of the 1927 Code was adopted, the stockholders' contract denied a personal liability for the assessment after his stock was applied thereon. Assuming, without deciding, that we determined that contention in accordance with appellant's claim in Leach vs. Arthur Savings Bank (203 [fol. 95] Iowa, 1052), supra, nevertheless appellant has not thereby shown that section 9248-a1 above named, is unconstitutional and void.

Returning again to section 9246 of the 1927 Code, it is found that the legislative provision there is:

"Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment *upon the stockholders* (the italics are ours) * * *."

The assessment plainly is not upon the stock, as such, but rather upon the stockholder personally. If, under section 9246 above-quoted, the assessment is upon appellant individually, then section 9248-a1 in no way changes such individual liability. Originally, under the old statute, the assessment was against the stockholder and not against the stock. Likewise, under the amendment the assessment is still against the stockholder. According to the original statute, the stockholder was personally and primarily liable for the assessment, and section 9248 and its predecessors had to do only with the remedy and nothing else. Then, assuming that the only remedy originally made for the collection of the assessment was to confiscate the stock-

holder's stock, nevertheless, so far as the remedy was sufficient, the stockholder was personally liable for the assessment. This burden was cast upon the stockholder himself, [fol. 96] even though the only remedy to enforce the obligation was by the sale of the stock. Consequently, appellant's obligation in the premises had not been increased. He was always obligated to pay the assessment. Of course, if he did not pay, the only remedy under the statute was to sell his stock; yet the obligation to pay was there just the same. Now, under the new legislation, the stockholder's liability has not been increased, but rather the remedy for enforcing that obligation has been changed. Were the remedy a part of appellant's contract, a change thereof would amount to an impairment. Barnitz vs. Beverly, 163 U. S. 118; Conley vs. Bartin, 260 U. S. 677.

Obviously in the case at bar, however, we are not confronted with a case where the remedy became a part of the contractual obligation. There is not a syllable in the statutory contract which in any way indicates that the remedy is a part of the agreement. It was not said by the legislature that there could be no other or different remedy. Hence it was perfectly proper for the law making body to adopt section 9248-a1 of the 1927 Code, because such amendatory legislation pertained to the remedy only. The purpose of this legislative enactment was to afford a more appropriate remedy for an obligation already existing against [fol. 97] appellant. Ever since becoming a stockholder of the appellee bank, he was obligated to pay any legal assessment made for the purpose of repairing the capital stock. This new legislation simply recognized that obligation and afforded a more complete remedy to enforce the same. No new obligation was created by the amendment, but rather the old was recognized and a better way to enforce it provided. Such action of the legislature in no way impairs the obligation of the contract. Conley vs. Barton (260 U. S. 677), supra; Johnson vs. Libby, 88 Atl. 647 (Me.); Brotherhood of American Yoemen vs. Mans. 206 Pac. 403 (Ariz.); Barton vs. Conley, 112 Atl. 670 (Me.); Perkins vs. Coffin, 79 Atl. 1070 (Conn.); Waggoner vs. Flack, 188 U. S. 595; Henley vs. Myers, 215 U. S. 373; Hill vs. Merchants' Mutual Insurance Co., 134 U. S. 515; Bernheimer vs. Converse, 206 U. S. 516; Lynch vs. Jacobson, 184 Pac. 929 (Utah). See Barnitz vs. Beverly (163 U. S. 118), supra. A

few brief quotations from some of the foregoing cases will elucidate the thought.

It was said in Bernheimer vs. Converse (206 U. S. 516), supra:

"There is a broad distinction between laws impairing the obligation of contracts and those which simply undertake to give a more efficient remedy to enforce a contract already [fol. 98] made."

Again in Henley vs. Myers (215 U. S. 373), supra, it is declared:

"Equally without merit is the contention that the statute of 1899 impaired the obligations of the stockholder's contract, in that it substituted for individual actions against them a suit in equity by a receiver appointed after judgment against the corporation. In becoming stockholders, the defendants did not acquire a vested right in any particular mode of procedure adopted for the purpose of enforcing their liability as stockholders. It is a well established doctrine that mere methods of procedure in actions on contract, that do not affect the substantial rights of parties, are always within the control of the state. It is to be assumed that parties make their contracts with reference to the existence of such power in the state."

Likewise in Waggoner vs. Flack (188 U. S. 595), supra, similar language is used as follows:

"*There was no promise or contract expressed in the statute that the state would not enlarge the remedy or grant* [fol. 99] *another on account of the purchaser's violation of his contract, and we think no such contract is to be implied.* (The italics are ours.) A purchaser of lands at the time Phillips purchased had no right to assume that the state would not alter the law in the future so far as to give it another and better or a quicker remedy for a violation of his contract by the purchaser than existed at the time the purchase was made. To enact laws providing remedies for a violation of contracts, to alter or enlarge those remedies from time to time as to the legislature may seem appropriate, is an exercise of sovereignty, and it cannot be supposed that the state in a case like this, contracts, in a public act of its legislature, to limit its power in the future, even

if it could do so, with or without consideration, unless the language of the act is so absolutely plain and unambiguous as to leave no room for doubt that its true meaning amounts to a contract by it to part with its power to increase the effectiveness of existing remedies as against those who purchase lands while the act remains alive. No such language is to be found in the act in question, and non- ought to be implied."

[fol. 100] Also the Arizona Court, in Brotherhood of American Yoemen vs. Manz (206 Pac. 403), supra, reading on page 406, laid down a similar doctrine in the following language:

"We understand the rule to be that parties have no vested right in particular remedies or modes of procedure, and that legislatures may change existing remedies or prescribe new modes of procedure without impairing the obligation of contracts, provided an efficacious remedy remains for its enforcement."

To the same effect is the following pronouncement in Johnson vs. Libby (88 Atl. 647), supra, reading on page 649:

"Its (the amendment to a statute) only purpose and effect was to provide a different remedy, a different course of procedure, by which the shareholders' liability could be enforced. The legislature has power to modify or change a remedy, provided no substantial right is thereby impaired. *And a shareholder in a corporation has no vested right in a particualr remedy by which his liability as such may be enforced against him.* (The italics are ours.) A change of remedy, whereby no substantial right is affected, is not obnoxious to the fundamental law which forbids the impairment of contracts."

[fol. 101] Thus it appears that the Supreme Court of the United States on many occasions has emphatically declared that a stockholder in a corporation ordinarily has no vested right in a remedy and therefore such remedy may be changed without impairing the obligation of contract. Not only has that doctrine been announced by the Supreme Court of the United States, but likewise it has been declared by practically every state in the union. As before seen, appellant's contract in the case at bar did not give

him a vested right in any particular remedy. There is no language in the statutes under consideration which indicates in any way that the remedy should not be changed. According to the statute, the assessment in question is against the stockholder himself. That is so because of the express language used by the law-making power, as will be seen by referring to the statutes above-quoted.

Conceding, without deciding, that under the original statute, the remedy was limited to the confiscation of the stock, yet that remedy, such as it was, arose for the purpose of enforcing a personal liability against the stockholder. Resultantly the new legislation also increases the remedy for the purpose of enforcing the same personal liability against the stockholder. Therefore, section 9248-a1 of the 1927 [fol. 102] Code is not unconstitutional and void for it does not impair the obligation of a contract under the state and federal constitutions.

The judgment and decree of the district court should be, and hereby is, affirmed.

Affirmed.

Faville, C. J. Stevens, Morling, and Wagner, J.J., concur.

Evans, Albert, and Grimm, J.J., dissenting, as follows:

We disagree with the majority opinion.

The appellee was incorporated as a savings bank, under the laws of this state, May 6, 1891. Twenty years later, to wit, May 11, 1911, the bank was reincorporated. In February 1920, the capital stock was increased from $30,000 to $50,000. The appellant was the owner of 26 shares of stock in said bank. Ten of said shares were acquired about the time of the original incorporation, to wit, May 18, 1891. Ten more shares were acquired April 16, 1906. Six and one-sixth shares were acquired February 14, 1917. The certificate therefor was surrendered, and a new certificate for six shares, representing however the same stock, was issued June 8, 1925. On February 15, 1927, the capital stock of said bank was impaired to the extent of 100 per cent thereof, and on said date the superintendent of bank- [fol. 103] ing of the state determined that said capital stock was so impaired and ordered the board of directors of said bank to collect an assessment against the stock of

said bank in the amount of 100 per cent. The proper proceedings were taken, notices were given of the assessment, and on or about the 4th day of October, 1927, due notice of the time and place of sale of appellant's stock was had, and on the 17th day of November, 1927, appellant's said shares of stock were duly offered for sale at public auction and were sold by the appellee for the sum of $1 per share, or a total of $26. This action is brought to recover from the appellant the deficiency between the amount of said assessment and the said $26, to wit, the sum of $2,574. It is conceded by all parties that the said assessment is predicated solely on the provisions of Chapter 181 of the Acts of the Forty-first General Assembly, which became effective March 13, 1925, and which is now embodied in section 9248-a1 of the Code of 1927. No question is raised but that the stock of the appellant was subject to an assessment by reason of impairment of the capital stock of the appellee bank. Chapter 29 of the Acts of the Twenty-fifth General Assembly, [fol. 104] providing for such assessment, became effective May 5, 1894. This statute was carried into the Code of 1897 in sections 1878, 1879, and 1880. Said sections are substantially embodied in the Code of 1927 in sections 9246-9250. These several statutes, as they existed prior to the enactmnt of chapter 181 of the Acts of the Forty-First General Assembly, provided for an assessment to be made against shareholders of a savings bank to replace the impaired capital of such a bank. The sole provision, however, in the statutes as they then existed, for the enforcement of such an assessment, was that a sufficient amount of the capital stock held by a stockholder could be sold at public auction after proper notice to satisfy said assessment. It was under these statutory provisions that the appellant held his stock prior to the enactment of chapter 181 of the Acts of the Forty-First General Assembly. Said statute placed a new liability upon the holder of said stock in the event of an assessment to replace impaired capital. Not only could the stock of the stockholder be sold to satisfy such an assessment, but a personal liability was created for the balance of said assessment above the amount for which the stock sold. Chapter 181 amended the existing statute by adding thereto the following: "Should the proceeds of a

sale hereunder of all of the stock of any stockholder be [fol. 105] insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

At the time the appellant became the owner of his shares of stock the then existing law imposed no personal liability on the stockholder to replace the impaired capital of such a bank, Leach v. Arthur Savings Bank, 203 Iowa 1052.

Preliminary to our discussion we may state briefly the nature and scope of the questions in controversy.

The contention of the defendant-stockholder presents two alternatives:

(1) That chapter 181 does not in terms purport to be retroactive or to apply to contracts existing prior to its enactment; that it is presumptively prospective and not retroactive unless the contrary appear from its express terms.

(2) That if it be held that such chapter does by its terms purport to apply to all existing stockholders, including the defendant as a prior existing stockholder, then the statute is unconstitutional in that it impairs the obligation of a contract.

For the plaintiff-appellee, it is contended that said statute does purport to apply to all existing stockholders; that it is not unconstitutional by reason of its application to [fol. 106] existing stockholders because the liability imposed upon the defendant by the amending chapter 181 is precisely the same as that already existing under the provisions of sections 9246 and 9248 and that no additional burden is therefore imposed upon the defendant; that the same is not unconstitutional for the further reason that the amending chapter was enacted pursuant to power reserved by the Legislature under the provisions of section 8376; that the enforcement of the assessment pursuant to chapter 181 is the fair equivalent of enforcing the provisions of section 9251, which imposes a superadded liability upon stockholders for the payment of corporate debts; that the enforcement of one of these remedies is indirectly an enforcement of the other. The foregoing indicates the general field of debate.

I. Appellant urges that we first determine categorically, upon the interpretation of the language of chapter 181, whether it purports to be prospective only or retroactive also. If by its terms it be deemed to be only prospective in purpose, then the question of its constitutionality is thereby eliminated and the appellant is entitled to prevail upon the face of the statute. The problem presented however is not so simple as the appellant thus makes it. The question of interpretation is interlocked with the question of constitutionality. The volume of the argument is upon that ques- [fol. 107] tion. So far as the mere terms of the statute are concerned, they are quite non-committal. They might be applied with equal plausibility to a retroactive statute as to a prospective one. In such a case, the presumption would favor the prospective construction. On the other hand this chapter is a mere amendment of an existing statute. This would invite a construction that would give the amendment as broad an application as the existing statute itself. If a retroactive interpretation of the statute would render it unconstitutional, then that fact would of itself become a controlling reason why such interpretation should not be adopted. In that sense the question of constitutionality and the question of interpretation become parts of the same thing—the one being dependent upon the other. We shall therefore first consider the question of constitutionality on the assumption that the statute by its terms purports to be retroactive in its operation and to apply to all existing stockholders regardless of the fact that they had acquired their rights as such stockholders prior to the enactment of chapter 181:

The relation of a stockholder to his corporation is contractual. His legal status is succinctly stated in Cook on Corporations (8th Ed.) paragraph 492 as follows:

[fol. 108] "The charter of a corporation having a capital stock is a contract between three parties, and forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, it is a contract between the corporation and the stockholders; third, it is a contract between the stockholders and the state."

To the foregoing might be added a fourth aspect, viz: that it is a contract as between the stockholders themselves. The stockholder becomes a party to the contract by his pur-

chase of the stock. The relation thus created is purely voluntary on his part. His volition being exercised, he becomes bound to all the obligations expressed in the contract and imposed upon him by existing law. On the other hand he becomes entitled to all the benefits of the contract whether they exist at present or accrue in the future. Generally speaking his obligation thus assumed may not be enlarged against his consent. The defendant herein had acquired all his stock in the corporation long prior to the enactment of chapter 181 under consideration. Under his contract he bound himself to pay to the corporation the full par value of the stock purchased. In other words he agreed to devote to the enterprise the amount of capital specified in his purchase. By virtue of the existing statute 9248 he is deemed to have consented also to the sale of his [fol. 109] stock by the corporation in the event it became necessary to do so in order to restore any impairment of capital. This comprises his full undertaking as between him and his corporation. We need not here consider the question of his liability to creditors under Section 9251. His relation to the corporation creditors is not involved herein.

In St. John v. Building & Loan Ass'n, 136 Iowa 448, we said:

"It will be noted that the act itself does not attempt to change the contracts of members, but it does provide that if the association failed to comply therewith on or before July 15, 1900, its authority to do business should cease, and its affairs should be wound up, and settlements made with all members according to the provisions of the act. Defendant then had the option of complying with the law and adjusting its outstanding contracts on the basis outlined in the act, or of going out of business and settling with its members upon the basis fixed in section 7 of the act (Acts 28th G. A. c 69). It had no constitutional or other right to continue in business indefinitely or for any other time than the Legislature might see fit to permit. This is a fundamental principle or corporate law under the re- [fol. 110] served power now generally given to the Legislature. Bishop v. Brainerd, 28 Conn. 289; In re Brooklyn R. R., 72 N. Y. 245; (Id.) 75 N. Y. 335, (Id.) 81 N. Y. 69. *Of course, the relation between the corporation and its stockholders cannot be changed or disturbed against their*

will. All that the Legislature may do in this respect is to grant the power, and then it is for the corporation to accept or not as it pleases. Kenosha Co. v. Marsh, 17 Wis. 13." (The italics are ours.)

As bearing on the question, see also, Garey v. St. Joe Mining Co., 32 Utah, 497, 91 P. 369, 12 L. R. A. (N. S.) 1554; Union Pacific R. R. Co. v. United States, 99 U. S. 700, 25 L Ed. 496; Central Pac. R. R. Co. v. Albert Gallatin, 99 U. S. 727, 25 L. Ed. 504; Hathorn v. Calef, 2 Wall. 10, 17 L. Ed. 776; New Orleans, etc., R. Co. v. Harris, 27 Miss. 517; Corning v. McCullough, 1 N. Y. 47, 49 Am. Dec. 287; Coffin v. Rich, 45 Me. 507, 71 Am. Dec. 559; Fairchild v. Masonic Hall Ass'n, 71 Mo. 526.

The case here quoted from was one wherein the stockholder was plaintiff and the corporation, defendant. The amended legislation involved in that case was directed against certain practices of the corporation and these were [fol. 111] forbidden by the statute. The opinion recognizes the right of the corporation as well as of the stockholder to be immune from any impairment of contract obligations as between them, but it holds also that the corporation itself was subject to regulation by the Legislature and that it had the option to conform to such regulations or to cease its corporate operations; that by the amendment of its charter in conformity to the statute it exercised its option and elected to conform to the amended statute.

In Yoncalla State Bank v. Gemmil, 159 N. W. 798, (Minn.), it was said:

"But it is one thing to impose burdens upon the property voluntarily placed in a banking business by a stockholder of a bank, and quite another to impose a *personal liability* upon him, thereby subjecting property which he has not devoted to banking business to be taken from him to pay creditors of the bank."

We are confining our discussion at this point to the narrow question whether chapter 181 if applied retroactively imposed a burden upon the defendant additional to that previously existing under his contract. We deem it clear that it did impose such additional burden. If so, then it must be deemed an impairment of the obligations of defendant's contract unless it shall appear that the Legisla-

ture acted within its so-called reserve power as defined in [fol. 112] section 12, article 8 of the constitution and in section 8376 of the Code. The question of such power inheres necessarily in the question of constitutionality and we proceed to its consideration.

II. Section 12, article 8 of the Constitution of Iowa is as follows:

"Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted."

Pursuant to this constitutional provision, the Legislature enacted section 8376 of the present code (section 1619 Code '97) as follows:

"The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, [fol. 113] withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good."

This section is to be read and construed in the light of the constitutional provision, though its terms are not identical with the terms of the constitutional provision. But inasmuch as the power to enact section 8376 was conferred by section 12, article 8, and not otherwise, the two sections may be well construed as identical in legal effect. The appellee contends for a very broad construction and application of Section 8376 and puts especial emphasis upon terms that are not contained in the constitutional provision. A similar constitutional provision substantially identical in effect has obtained in many, if not in all, of our states. The courts of the various states, as well as the

Supreme Court of the United States, are in substantial harmony in the interpretation which is put upon such provision. There is substantial unanimity in the decisions that the reserve power thus contended for is a power of repeal of legislation relating to corporations and a power of withdrawal of privileges and immunities previously granted. It is not an affirmative power to impose new and additional [fol. 114] obligations or burdens upon the corporation; and especially it is not an affirmative power to add new obligations or burdens to the existing contracts of the stockholders. The limitations upon the reserve power is summar-i-ed in Cook on Corporations (above cited) as follows:

"But the power to make a new contract for the stockholders is not thereby given to the legislature. The legislature may repeal the charter *but cannot force the stockholder into a contract against his will.*"

In County of Santa Clara v. Southern Pacific, 13 Fed., 722, such power was defined by Justice Field as follows:

"*By the reservation clause it retains power only over that which it grants;* it does not grant the rails on the road; it does not grant the deposits alongside of it; it does not grant the cars on the track, nor the engines which move them, and over them it can exercise no power except such as may be exercised through its control over the franchise, and such as may be exercised with reference to all property used by carriers for the public. The reservation of power over the franchise—*that is over that which is granted*—makes it grant a conditional or revocable contract, whose obligation is not impaired by its revocation or change."

From Central Pacific R. R. Co. v. Albert Gallatin, 99 U. S., [fol. 115] 727; 25 L. Ed. 504-525, we quote the following:

"The object of a reservation of this kind in acts of incorporation is to insure to the government control over corporate franchises, rights and privileges, which, in its sovereign or legislative capacity, it may call into existence, *not to interfere with contracts which the corporation created by it may make.* Such is the purport of our language in Tomlinson v. Jessup, where we state the object

of the reservation to be 'to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference,' and that 'The reservation affects the entire relation between the state and corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the state.' 15 Wall. 454, 21 L. Ed. 204. The same thing we repeated with greater distinctness in the case of R. R. Co. v. Maine, where we said that by the reservation the state retained the power to alter the act incorporating the company, in all particulars constituting the grant to it of corporate rights, privileges and immunities; and that 'The existence of the corporation, and its franchise and immunities, derived directly [fol. 116] from the state, were thus kept under its control.' But we added, that *'Rights and interests acquired by the company, not constituting a part of the contract of incorporation, stand upon a different footing.'* 96 U. S. 490, 25 L. Ed., 836."

In 1 Rose's Notes on U. S. Reports, p. 942, Mr. Rose summarizes the decisions of the court on this question as follows:

"In many of the cases, the purposes of the legislation attempted under the reserve power is the taking away of something—whether a franchise, power, privilege, or immunity—which the corporation has hitherto enjoyed * * *. Under the reserve power, the state * * * *may take away or it may modify that which it has granted. But that is all.*

Property acquired during the exercise of these powers it may not devest, *contracts already executed* it may not annul, acts lawful when committed it may not afterwards punish, taxes thus remitted it may not afterwards exact, and the legislation thus attempted *must be prospective and* not retrospective in its operation. This principle has been very clearly stated by several of the most eminent of the members of the Supreme Court of the United States."

The standard text books are all in accord along the same line. It is to be noted also that the reservation of such

power to the Legislature is one impliedly hostile to the [fol. 117] corporation.

Chapter 181 under consideration does not purport to repeal or to withdraw any privilege or immunity from the corporation. It does not purport to repeal or to withdraw any privilege or immunity from the stockholders. On the contrary it purports impliedly at least to confirm all previous legislation, and to add thereto an affirmative obligation of personal liability of the stockholder for the restoration of impaired capital. Prior to this legislation the stockholder was under such obligation only as he had voluntarily assumed. By virtue of the legislation, if valid, an obligation was imposed upon him against his consent. We deem it clear that such legislation was not within the purview of the reserve power.

Appellee cites to us authorities wherein legislation was sustained which purported to impose liability upon stockholders for the debts of the corporation notwithstanding that such stockholders were in the first instance immune therefrom. The argument in support of such holding is that the immunity from liability for the debts of a corporation is a privilege conferred by statute upon the stockholders and that under the reserve power it may be repealed or withdrawn. See Anderson v. The Common- [fol. 118] wealth, 18 Gratton (59 Va.), 295. For the purpose of this case we shall assume such to be the law. The argument is wholly consistent with our foregoing discussion. Liability of a stockholder for the debts of his corporation occupies a different field from that of the liability of one stockholder to another, or to the corporation. The latter liability is created by the mutual contract of the parties and not otherwise. Whether under our statute the qualified immunity of a stockholder from the payment of debts of the corporation is statutory rather than contractual, we do not now consider.

We note the contention of appellee that Chapter 181 added nothing to the law as it already existed. It is argued that the purported liability created by this chapter already existed under the express terms of Sections 9246 and 9248. The point is without merit. Leach v. Arthur Savings Bank, 203 Iowa 1052.

It is further contended by appellee that this action is maintainable under the provisions of Sections 9251 and

9252; that the stockholders are liable in any event for the debts of the corporation in case of insolvency; that in such case this defendant would be liable for a 100% assessment under the provisions of said section 9251 and 9252; that the [fol. 119] same end will be accomplished by the enforcing of the 100% assessment in the instant case. The argument is wholly untenable. No liability of the stockholder arises under section 9251 until the corporation becomes insolvent. If the liability should accrue, the corporation could not sue for it. Its very insolvency would preclude it from maintaining an action against any one. Nor could any other plaintiff sue the defendant separately upon such liability. Section 9253 provides the remedy pursuant to sections 9251 and 9252. Separate suits by separate creditors against separate stockholders, are not maintainable. All persons interested in the fund must be impleaded in the action. Section 9253. Platner v. Hughes, 200 Iowa 1363. The liability of a stockholder under sections 9251 and 9252 is not affected by the question of his liability under Sections 9246 and 9248. The assessment provided for in 9248 is for the benefit of the corporation as a going concern. The proceeds of the assessment are invested in its assets and and are subject to the same loss and to the same management by corporate officials as any other asset. The statute provides for no finality in such assessment. If the proceeds be lost in the further course of business, the same statute is open for the purpose of another assessment of the same kind. The statute in [fol. 120] terms provides no limit upon the repetition of assessments against the stockholder to restore impaired capital. It does not in terms give the minority stockholder any right of defense against any number of assessments. This record discloses that this is not the first assessment of this kind that has been made against the stockholders of this bank. A 50% assessment was made some years previously. The brief of appellant asserts that another like assessment of 100% was made in 1929 while this action has been pending. This statement is outside of the record and we give it no consideration. It may properly serve the function of a hypothetical case as an illustration of what may be done under chapter 181 if we sustain the contention of appellees. Restoration assessments may be poured into this bank indefinitely by the majority control, and no payment thereof by the minority stockholder will enable him to escape from

the thraldom of his membership. The receptacle into which the successive assessments may be shoveled, is forever receptive, like a wagon-box without an endgate.

For further authorities in support of our holding herein reference may be had to the following: Noble State Bank v. Haskell, 219 U. S. 104, 55 L. Ed. 112; Garey v. St. Joe [fol. 121] Mining Co., 91 Pac. 369; Sherman v. Smith, 1 Black 587; Matter of Lees Bank, 21 N. Y. 9; Barnes v. Arnold, 51 N. Y. Supp. 1109; Barnes v. Travor, 61 N. Y. Supp. 85; 14 C. J. 974; Shields v. Ohio, 95 U. S. 319, 324; Chicago N. & St. P. v. Wisconsin, 238 U. S. 491, 59 L. Ed. 1423; Zabriskie v. Hackensack & N. Y. R. Co., 18 N. J. Eq. 178, 192 (90 Am. Dec. 617); People v. Beakes Dairy Co., 222 N. Y. 416, 119 N. E. 115, 3 A. L. R. 1260; Commonwealth v. Essex Co., 13 Gray (Mass.) 239, 253; People v. O'Brien, 111 N. Y. 1, 52, 18 N. E. 692, 704 (2 L. R. A. 255, 7 Am. St. Rep. 684); In Re St. Sinai Hospital, 250 N. Y. 103, 164 N. E. 871, 874; Superior Water etc. Co. v. Superior, 263 U. S. 125, 68 L. Ed. 204; Macon Gas Co. v. Richter, 143 Ga. 397, 85 S. E. 112; McKenzie v. Guaranteed Bond & Mortgage Co., 147 S. E. 102, 105; 12 C. J. 1027, 14 C. J. 187, 189; Weede v. Emma Copper Co., 200 Pac. 517; In Re Opinion of Justices, 166 N. E. 401.

III. There is another feature of this legislation, which tends to nullify its application to the case before us. The original legislation providing for assessment of stockholders for the purpose of curing impairment of capital appeared as Sections 1878 and 1879 of the Code of '97. This original legislation authorized a sale of the stock of any stockholder who refused to pay his assessment. This legis- [fol. 122] lation was later amended by Chapter 181, 41 G. A., which we have set forth above.

In the case before us, and pursuant to this amendment, the plaintiff, or its directors, caused the stock of the defendant to be sold and the same was purchased for the nominal sum of $1.00 per share. This left a deficiency of $99.00 and this suit is brought against the original stockholder to recover the $99.00. It is to be noted that this amendment carries a certain quality of self-contradiction and inconsistency and of an arbitrary imposition of affirmative personal liability upon the original stockholder. This affirmative assertion of personal liability, as against such stockholder,

is in no sense an exercise of a power reserved by the Legislature in the grant of the original franchise. If this legislation had been in effect at the time of the granting of the original franchise, it could become personally obligatory upon this defendant only by his consent to become a stockholder upon the conditions thus imposed. To apply this legislation to him after he had become a stockholder, is to impose upon him arbitrarily a personal liability which could not have been originally imposed upon him without his consent. The original statute authorized a sale of the stock. Such sale would necessarily oust the stockholder. [fol. 123] The purchaser would become the new stockholder. The interest of the first stockholder would be extinguished. As long as he remained a stockholder, his contribution to the restoration of the value of his stock operated presumptively to his own interest. The stock and his contribution thereto still belonged to him. But if the stock be sold, then the purchaser necessarily steps into the stockholder's shoes and becomes thereafter the beneficial owner of all contributions, which may be made to the valuation of such stock. Having elected to buy such stock and to become the beneficiary of all benefits to accrue to the holder of such stock, why should it be deemed a duty of the old stockholder to contribute to the new one an assessment ninety-nine times greater than the value paid by the new stockholder? The corporation being solvent and a going concern, the payment of this assessment by the old stockholder operates exclusively to the benefit of the new one. If the corporation were insolvent and a closed concern, a different question would be presented. In such event the old stockholder would be liable for a 100% assessment under his original franchise. But his liability would not be to the corporation, nor to the new stockholder, but would be a liability to the creditors to the extent of their loss and no [fol. 124] more. When this suit was brought against this defendant, he was no longer a stockholder. The corporation had no jurisdiction over him as such. He had been wholly ousted. In order to sustain the right of the corporation to maintain this action, we must hold that the Legislature has power to charge an affirmative personal liability against a former stockholder, not for the purpose of liquidation, not for the purpose of paying the claims of creditors, not for the purpose of repairing any wrong done by himself, but for the sole purpose of restoring his former

stock to a 100% valuation in the hands of the purchaser, who had bought it for its then existing nominal value of $1.00. Such a proceeding amounts to a mere taking of the funds of an individual and donating the same to another individual. In this case the Banking Superintendent declared an impairment of 100% of the capital. He did not however deem the bank as insolvent, but continued it as a going concern. It is still a going concern. The payment of this assessment by this defendant will necessarily operate a gift of $99.00 per share to the new stockholder. We do not think that it is within the legislative function to confer such a power upon any agency; nor indeed do we think that the Legislature itself could exercise such a power.

In support of the foregoing discussion, the following [fol. 125] authorities will be found pertinent; Garey v. St. Joe Mining Co., 91 Pac. 369.

"Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reversed powers, the vested rights of property of corporations, in such cases, are surrounded by the same sanctions and are as inviolable as in other cases." Shields v. Ohio, 95 U. S. 319; Chicago M. & St. P. v. Wisconsin, 238 U. S. 491 (59 Law Ed. 1423).

"The reserved right to amend a corporate charter does not confer mere arbitrary power and cannot be so exercised as to violate fundamental principles of justice by taking of property without due process of law." Chicago M. & St. P. R. C. v. Wisconsin.

"Amendments of a charter of a corporation which are vital, radical and fundamental in their nature cannot be adopted without the unanimous consent of the stockholder. Increasing the amount of the common capital stock in a corporation in excess of the amount authorized by the charter is a vital and fundamental change of the original contract and requires the unanimous consent of all the stockholders." Macon Gas Co. v. Richter, 143 Ga. 397 (85 S. E. 112).

See also McKenzie v. Guaranteed Bond & Mortgage Co., 147 S. E. 102:

[fol. 126] "A provision for an assessment upon stock to pay debts is entirely different from one imposing a personal liability upon the stockholder. The one may be good when the other is not." Weeds v. Emma Cowper Co., 200 Pac. 117.

See also authorities collated in 12 C. J. 1027 and 14 C. J. 187.

For the foregoing reasons, we are of the opinion that the judgment below should be reversed.

[fol. 127] IN SUPREME COURT OF IOWA

[Title omitted]

JUDGMENT—April 10, 1931

In this case, the Court being fully advised in the premises, file their written opinion Affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby Affirmed and that a writ of procedendo issue accordingly.

It is further considered by the Court that the Appellant pay the costs of this appeal, taxed at $78.70 and that execution issue therefor.

[fol. 128] [File endorsement omitted]

IN SUPREME COURT OF IOWA

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed May 20, 1931

Petition for Appeal

Considering himself aggrieved by the final decision of the Supreme Court of the State of Iowa in the above entitled case, the defendant (appellant) therein, hereby prays

that an appeal be allowed to the Supreme Court of the United States and for an order fixing the amount of the bond thereon, same to act as a supersedeas.

Appellant represents that the issues in this case question the validity of Chapter 181, Acts of the 41st G. A. of Iowa (Section 9248-a1, Code of Iowa, 1927), insofar as same is construed to apply to and render appellant per- [fol. 129] sonally liable as a stockholder in Woodbine Savings Bank of Woodbine, Iowa, for an assessment to rehabilitate impaired capital of said bank, upon the grounds of its being repugnant to the Constitution of the United States, notably Section Ten of Article One in that said statute impairs the obligation of appellant's contract as a stockholder in said bank and the Fourteenth Amendment to the Constitution of the United States in that said statute deprives appellant of his property without due process of law; that the decision of the Supreme Court of Iowa, as set forth in the opinion rendered April 10, 1931, was in favor of the validity of said statute as so applied, and denied the claim of appellant that said statute as applied was repugnant to the Constitution of the United States.

That cause is one in which, under the legislation in force prior to the adoption of the Act of Congress approved January 31, 1928 as amended by the Act of Congress approved April 26, 1928, a review could have been had in the Supreme Court of the United States on writ of error under Section 237 of the Judicial Code as amended, being section 344 United States Code, Title 28.

Assignment of Errors

1. The Supreme Court of the State of Iowa erred in [fol. 130] holding that Section 9248-a1 of the Code of Iowa, 1927 does not impair the obligation of appellant's contract as a stockholder in the Woodbine Savings Bank of Woodbine, Iowa, in violation of Section Ten of Article One of the Constitution of the United States.

2. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa 1927 was a permissable change of remedy for a liability in existence before the enactment of said statute.

3. The Supreme Court of the State of Iowa erred in not holding Section 9248-a1 of the Code of Iowa 1927 unconstitutional as depriving appellant of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

4. That the Supreme Court of the State of Iowa erred in holding that there was a personal liability resting upon appellant to pay the assessment to rehabilitate the impaired capital of appellee bank prior to the enactment of Section 9248-a1 of the Code of Iowa, 1927.

5. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 did not impose a new and additional liability upon appellee not imposed upon him by his contract as a stockholder in appellee [fol. 131] bank or by the law of the state of Iowa at the time appellant became such stockholder.

Prayer for Reversal

For which errors, the defendant (appellant) prays that the said judgment of the Supreme Court of the State of Iowa, dated April 10, 1931, in the above entitled case, be reversed and a judgment entered in favor of said defendant (appellant) and for costs.

J. M. Parsons, W. E. Wallace, H. B. Claypool, Counsel for Appellant.

[fol. 132] [File endorsement omitted]

In Supreme Court of Iowa

[Title omitted]

Order Allowing Appeal—Filed May 20, 1931

The appellant in the above entitled suit having prayed for the allowance *for* an appeal in this case to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Iowa on the 10th day of April, 1931 and from each and every part thereof and having prayed and filed

his petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided, it is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Iowa in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State [fol. 133] of Iowa shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he should have the same in said court within thirty days of this date.

And it is further ordered that security for supersedeas and costs on appeal be fixed in the sum of $4,500.00.

Dated May 20th, 1931.

Frederick F. Faville, Chief Justice of the Supreme Court of the State of Iowa.

[fols. 134-135½] Bond on appeal for $4,500, approved and filed May 20, 1931, omitted in printing.

[fols. 136 & 137] Citation, in usual form, showing service on J. T. Hunt, omitted in printing.

[fol. 138] [File endorsement omitted]

IN SUPREME COURT OF IOWA

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed June 8, 1931

It is stipulated between Amos Shriver, Appellant, and Woodbine Savings Bank of Woodbine, Iowa, that the Clerk of the Supreme Court of Iowa shall include in the transcript of this case to be filed in the United States Supreme Court the following portions of the record in the Supreme Court of Iowa, to-wit:

1. The entire printed record in the Supreme Court of Iowa contained in appellant's abstract filed in the Supreme Court of Iowa.

2. Appellant's assignment of errors in the Supreme Court of Iowa, together with the filing date thereof.

3. Opinion delivered in this case by the Supreme Court of Iowa and filed on June 24, 1929, together with filing date thereof.

4. The order of the Supreme Court of Iowa granting rehearing in this case filed June 23, 1930, together with the filing date thereof.

[fol. 139] 5. The opinion of the Supreme Court of Iowa in this case, together with the dissenting opinion of Judges Evans, Albert and Grimm, filed in this case April 10, 1931, together with the filing date thereof.

6. The judgment of the Supreme Court of Iowa in this case dated April 10, 1931.

7. The appellant's petition for appeal, assignment of errors and prayer for reversal filed May 20, 1931, together with filing date thereof.

8. The order allowing appeal to the Supreme Court of the United States filed May 20, 1931, together with the filing date thereof.

9. Appellant's bond on appeal denominated supersedeas bond, filed May 20, 1931, together with the filing date thereof.

10. The citation and the service thereof, together with the filing date thereof.

11. This stipulation as to the record, together with the filing date thereof.

It is agreed that the Clerk of the Supreme Court of Iowa shall prepare the transcript of record to be used in the Supreme Court of the United States in accordance with this stipulation.

Dated this 23rd day of May, 1931.

Amos Shriver, by J. M. Parsons, W. E. Wallace, H. B. Claypool, His Counsel. Woodbine Savings Bank of Woodbine, Iowa, by C. A. Bolter, J. A. Murray, Its Counsel.

[fol. 140] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 141] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD DEEMED NECESSARY FOR THE CONSIDERATION THEREOF—Filed June 15, 1931

The appellant herein intends to rely upon the following points in the appeal taken in this case.

I. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 does not impair the obligation of appellant's contract as a stockholder in the Woodbine Savings Bank of Woodbine, Iowa, in violation of Section Ten of Article One of the Constitution of the United States.

II. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa 1927 was a permissible change of remedy for a liability in existence before the enactment of said statute.

III. The Supreme Court of the State of Iowa erred in not holding Section 9248-a1 of the Code of Iowa 1927 unconstitutional as depriving appellant of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

IV. That the Supreme Court of the State of Iowa erred in holding that there was a personal liability resting upon appellant to pay the assessment to rehabilitate the impaired capital of appellee bank prior to the enactment of Section 9248-a1 of the Code of Iowa, 1927.

V. The Supreme Court of the State of Iowa erred in holding that Section 9248-a1 of the Code of Iowa, 1927 did not impose a new and additional liability upon appellee not imposed upon him by his contract as a stockholder in appellee bank or by the law of the state of Iowa at the time appellant became such stockholder.

[fol. 142] Appellant designates the following parts of the record in this appeal as those which he thinks necessary for consideration of the above mentioned points:

I. All of the record in this appeal (Number —) except repetitions of titles as certified and transmitted by the

Clerk of the Supreme Court of Iowa to the Clerk of the United States Supreme Court.

James M. Parsons, Des Moines, Iowa, Counsel for Appellant. W. E. Wallace, H. B. Claypool, of Counsel.

We, the attorneys of record for the appellee, Woodbine Savings Bank of Woodbine, Iowa, hereby acknowledge due service of the above statement of points and designation this 6th day of June, 1931 and we do hereby stipulate and agree that the record in said appeal may be printed as designated in the within and foregoing statement and designation.

C. A. Bolter, J. A. Murray, Counsel for Appellee.

[fols. 143 & 144] The Woodbine Savings Bank of Woodbine, Iowa, a corporation, appellee in the case entitled Amos Shriver, Appellant vs. Woodbine Savings Bank of Woodbine, Iowa, Appellee, on appeal to the Supreme Court of the United States, hereby acknowledges due service of the foregoing and within statement of points on which appellant intends to rely and designation of parts of the record deemed necessary for the consideration thereof this 11th day of June, 1931, and hereby agrees that the record in said appeal may be printed as designated in the within and foregoing statement and designation.

Woodbine Savings Bank of Woodbine, Iowa, Appellee, by J. T. Hunt, Its Cashier.

Endorsed on cover: File No. 35,972. Iowa Supreme Court. Term No. 158. Amos Shriver, appellant, vs. Woodbine Savings Bank of Woodbine, Iowa. Filed June 12, 1931. File No. 35,972.